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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ORGANIZATION

WEDNESDAY, MAY 13, 1987



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, F. (Nickel Belt NDP)
VICE-CHAIRMAN: Reville, D. (Riverdale NDP)
Bernier, L. (Kenora PC)
Caplan, E. (Orlolo L)
Gordon, J. K. (Sudbury PC)
McGuigan, J. F. (Kent-Elgin L)
Offer, S. (Mississauga North L)
Pierce, F. J. (Rainy River PC)
South, L. (Frontenac-Addington L)
Stevenson, K. R. (Durham-York PC)
Wildman, B. (Algoma NDP)

Substitution:

Bossy, M. L. (Chatham-Kent L) for Ms. Caplan

Also taking part:

Martel, E. W. (Sudbury East NDP)

Clerk: Decker, T.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, May 13, 1987

The committee met at 3:53 p.m. in room 228.

ORGANIZATION

Clerk of the Committee: Honourable members, it is my duty to call upon you to elect one of your own as chairman of the committee. Are there any nominations for the position?

Mr. Reville: I would like to nominate the member for Nickel Belt (Mr. Laughren) as chairman of this committee. This is a setup.

Mr. Pierce: Is he a Liberal member? He is sitting on the Liberal side of the House.

Clerk of the Committee: Mr. Reville has nominated Mr. Laughren. Are there any further nominations? If not, I declare nominations closed and Mr. Laughren elected chairman of the committee.

Interjection: You are too late, Elie.

Mr. Martel: What a shame.

Mr. Chairman: I thank Todd Decker for arranging the agenda, if not the election. We should now nominate one of our own for vice-chairman of the committee.

Mr. Offer: I would like to nominate Mr. Reville as vice-chairman.

Mr. Chairman: Mr. Reville has been nominated. Are there any further nominations? If there are no further nominations, Mr. Reville, will you accept vice-chairman?

Mr. Reville: I will indeed.

Mr. Chairman: Let us move on. I would like a motion that will allow for the transcription of the proceedings.

Mr. Offer moves that, unless otherwise ordered, a transcript of all committee hearings be made.

Motion agreed to.

Mr. Chairman: We have prepared a budget. We know that at this point it may be a bit of a heroic assumption to plan to spend money for the entire fiscal year. Nevertheless, I think it is appropriate that we do that.

The budget is being distributed. It is a very traditional kind of budget; there are no surprises in it. It assumes 48 meetings or roughly 12 weeks and this would assume it takes us right through to March 31, 1988. Are there any questions? It assumes some travel, not a great deal, and certainly no exotic travel.

Mr. Mackenzie: Why?

Mr. Chairman: We think it is going to be that kind of year.

Mr. Offer: On a point of information: I am wondering if we realized, prior to the election of the chairman, the large discrepancy between the chairman's per diem and a member's per diem.

Mr. Chairman: Our cabinet so dictated.

Mr. Reville: Where is the extra per diem for the vice-chairman that you promised?

Mr. Offer: It is on page 4.

Mr. Reville: Perhaps it is a share of the chairman's extra. It probably is.

Mr. Pierce: I think they should be divided.

Mr. Chairman: We are just treated better. Is there a motion to adopt the budget, if there is no further insight?

Mr. Gordon moves that the budget be adopted.

Motion agreed to.

Mr. Chairman: I would like to present this to the Board of Internal Economy. Shall I do so? Agreed.

There was a meeting of the steering committee a month ago at which tentative decisions were made on the scheduling of business that is already before us. No one was bound to anything; there was an agreement that the committee as a whole should make that decision. Listed in front of you are the matters that were referred to the committee. First is the annual report of the Workers' Compensation Board; plant closures; Bill 9, the Ontario Environmental Rights Act; then the Occupational Health and Safety Amendment Act, a private member's bill by Mr. Martel; then the three transportation bills, 150, 151 and 152.

I suggest to the committee that what we must determine is the order of business. The steering committee agreed we would deal first with the plant closures committee because that is what we dealt with first in the interim. The report on that is done; it is a case of putting it before the committee and getting approval for it or making any amendments to it. It has been written by Mr. Nigro.

The WCB is not so simple because the committee had hearings right up to the end and then, if you recall, we asked Merike Madisso to trundle off and prepare a report, which she has done. When we are finished the plant closures report, we could then finish it off. I would hope that would be a priority of the committee, because it seems to me not to make sense to hold the hearings and do a report without then completing it. I really hope we do that.

There was agreement on that on the steering committee. What is not yet decided is what happens after that. I think we could do the plant closures report in a couple of days, one week of sittings.

Next week is a write-off because of the budget, but the following week we could set aside to deal with the plant closures report if the committee agrees to that.

1600

Mr. Martel: Can I ask a question? What happens to tomorrow and next Tuesday?

Mr. Chairman: Tomorrow we can have the plant closures report before us. It is already done.

Mr. Martel: And Tuesday?

Interjection.

Mr. Chairman: Really? Oh, the motion in the House gives us permission to sit only today and tomorrow. There has been no further motion put on the scheduling of the committees.

Mr. Wildman: You had better check with the House leaders then.

Mr. Chairman: Yes, but I think that will be done. I do not think that is a problem.

Mr. Martel: Which means that if you had a smaller one next Tuesday, you could well be done the plant closures report by next Tuesday.

Mr. Chairman: It would be possible--Thursday and Tuesday. That is assuming that those are the sitting days, but we do not know that at this point.

Mr. Mackenzie: I am inclined to think that, unless there is disagreement on the committee, we could finish it in those two days. We cannot make major changes now. We have done the debating and the arguing and passed the amendments. From our point of view, the dissent is issued. It is just a question of whether there is any disagreement with the writing that has been done by our research team.

I can see no reason that we should not be able to finish that in a day or two. I think it is time it is presented in the House in any event. There is one hell of a lot of activity in the plant field, and people want to see what is in it.

Mr. Chairman: I agree. This afternoon we will distribute the report that Mr. Niero has done, and if members choose to read it ahead of time, so much the better. Tomorrow afternoon, after routine proceedings, we could proceed with going through that report. Is there agreement on that?

All right. We will assume at this point that we will do the same next week for Tuesday, but Thursday is out because of the budget; certainly for me it is out.

We will go according to that schedule and then the week after, if we have done the plant closures, we will deal with the WCB.

We need to decide what flows from that because if we are going to do any advertising, we should know now. If we are going to notify groups, we should

start that process. We will entertain debate now on what we deal with after the WCB report.

Mr. Wildman: It would seem to me that it would be sensible for us to go to Bill 149. After we have dealt with plant closures and WCB, we should go from there to Mr. Martel's bill on the Occupational Health and Safety Act.

Mr. Reville: It fits right in. You will note I said that it fits right in.

Mr. Chairman: It fits right in, said Mr. Reville.

Mr. Offer: I have a further question with respect to workers' compensation. I think in the steering committee we had allocated two weeks for that.

Mr. Chairman: Correct.

Mr. Offer: I am just trying to get a time frame as to considering two days of sitting for the two weeks starting the week of May 25--not on that day, but certainly that week. I just wanted to get an idea on that two-week time.

Mr. Chairman: We will try to do it that week and the week of June 1.

Mr. Offer: With respect to the prioritization after the plant closure and the workers' compensation--I certainly have no objection to those two following in that order--I would suggest that we move to the transport bills. I made that known in our steering committee meeting. I would like to indicate that it is still the opinion of the ministry that the total amount of time necessary to deal with those bills would be approximately two weeks. There has been extensive consultation with all the major parties and there is substantial agreement on all the issues, or so I have been informed.

Mr. Reville: We can leave it until later then.

Mr. Offer: I will go on that one, actually.

I have just as early as today reconfirmed that this still remains the case. With respect to the point made that we can do it later, it is important that this is something in keeping with other provinces and some federal matters and that some time requirements have been imposed with respect to these bills.

Because of the shortness of the deliberations, and basically because of the agreement between all the parties affected, I would like these bills to be taken next in priority for a period of approximately two weeks. After that, I would have no problem in dealing with Bill 149. I know there has been some discussion with respect to public hearings and some travel involved. I have no objection to that whatsoever, but I indicate once more that with respect to those transport bills it is very necessary that they be brought before committee for deliberation.

Mr. Chairman: You are not worried about being accused of ramming a bill through too quickly in the form of the transportation bills.

Mr. Offer: I take my lead from you, Mr. Chairman.

Mr. Chairman: I was thinking of the lottery bill.

Mr. Offer: That is why I take my lead.

Interjections.

Mr. Chairman: It has gone..

Interjection: What do you mean?

Mr. Reville: It is in the House.

Mr. Chairman: That is right. Is there any further debate on the order of business? If not, I will ask for a motion.

Mr. Martel: I do not know which is more important, trucks or lives. I always thought lives were more important. That is a strange habit of mine. I think human life is worth more than a truck. Looking at the timetable, if we follow what Mr. Offer is saying, the Workers' Compensation Board will finish on June 5 or thereabouts. Two weeks for transport bills takes you to June 19. If the House gets out around June 26, you have about three days to look at health and safety, which is not much time.

I worry about our priorities and I remind you that there has been one worker killed every working day of the past five years in this province. I have to come down on the side of human life rather than running around with my truck to make sure it is economically viable for me to do so, because for the dead there is nothing that is economically viable. I ask that we reverse them and put the couple of weeks of hearings on occupational health--

Mr. Reville: Two weeks?

Mr. Martel: I was hoping for two or three weeks. I just think that is much more important. The committee can decide it. I do not have a vote in here, but I want to tell you, when picking priorities, what my priorities are.

Mr. Gordon: Mr. Martel says he does not have a vote in here, but he certainly has a great deal of influence because he expresses himself quite well on issues such as health and safety.

Mr. Chairman: He is very (inaudible).

Mr. Gordon: I beg your pardon?

Mr. Chairman: I am only kidding.

Mr. Reville: He did not mean it.

Mr. Gordon: I just wanted the kidding part on the record.

Mr. Chairman: Yes.

Mr. Gordon: Listening to my colleague Mr. Offer talk about trying to schedule what the government would like to see with regard to these transportation bills, I guess we could agree to the proposition you have made today with regard to scheduling, as long as we are assured that (1) we were not really looking at more than two weeks for these transportation bills--you have told us we can expect to be looking at no more than that--and (2) that

Mr. Martel's bill be sent out for public hearings that would last for three weeks or more. As he has stated, his bill breaks a lot of new ground. There is a great deal of interest out there, both in the labour constituency and among employers. I think it deserves full public hearings and our party is prepared to support them. I guess I would want to know whether that is the kind of arrangement we are making here today. That is what we want. If we could have a motion to that effect, we would be happy.

1610

Mr. Chairman: I will be seeking that nominat--

Mr. Martel: Will you?

Mr. Gordon: I am not running for your party.

Mr. Chairman: There were rumours. I will be seeking that motion.

For a moment, let us decide on the advertising as well, because that is important to us. I assume the public hearings will be held here in a committee room. I am talking about the transportation bills. Mr. Offer, in view of what you have said about the groups already being consulted and so forth, do you want to advertise? Do you think the committee should be advertising?

Mr. Offer: I have a list of some of the groups that might want to make representations that I will be pleased to deliver to yourself or the clerk. I cannot really indicate one way or the other whether there should be some public presentations, save for the fact that the groups involved have already been consulted and we are going to be hearing them.

Mr. Chairman: I am just worried about excluding people.

Mr. Offer: I cannot give any assurance one way or the other on that now.

Mr. McGuigan: Is it possible to advertise in trade magazines and therefore cut down on the cost of advertising?

Mr. Chairman: The problem there is how often they come out. If it is once a month, you might miss the date.

Mr. Pierce: Who actually receives them? I have certainly tried doing that with some of the people in my area, suggesting that they buy the Daily Commercial News. The cost of getting that newspaper, as you are aware, is very expensive. By the time they get it, lots of the ads that are placed in it are redundant anyway because of the time it is actually published.

Mr. McGuigan: There are quite a number of transportation magazines. Maybe that would not get to the public.

Mr. Chairman: I think the time element is the other problem, how often they come out.

Mr. Pierce: If I could offer a comment, I believe one of the three bills, and I am not sure which one it is, respects the Public Commercial Vehicles Act. I know there are a lot of independent truckers in northern Ontario, and I am sure there are equally as many in southeastern Ontario, who are very concerned about the existing regulations in acquiring a public

commercial vehicle licence. They would very much like to know that these hearings are being held and would very much like to present, in some form, their case and what they think the changes to the act should be.

I do not want to say I am spending as much time on PCVs as I am on the Workers' Compensation Board, but it comes very close because of the independent truckers who are out there trying to make a living and who cannot get a licence under the present regulations. In fact, it was suggested to me this morning by a girl in the Ministry of Transportation and Communications that I have the people apply for temporary permits. I asked the girl if there was any chance of their getting them and she said, "No, but it certainly slows up the process." I said, "Let us not embarrass yourself and me both by even suggesting that the guy should apply."

Mr. Martel--I fully agree with him--has his Bill 149 that respects the life and safety of the workers. There are different ways of dying and one is through starvation if you do not have a job. The Highway Traffic Amendment Act respects life as well.

Mr. Martel: It is a lot slower, though.

Mr. Pierce: It may be a lot slower but a lot harder to accept. I think we are all coming from the same place. There are people out there who have suffered some major hardships because of the regulations that have been forced on them by the Truck Transportation Act. Having said that, I think we owe these people an opportunity to have some input into any changes in the regulations.

Mr. Chairman: I agree. Would the committee accept the determination to advertise in the major dailies that hearings will be held here in Toronto but also to advertise in the north? They will have to come here; there is not much we can do about that. Is that agreed? I think it is better than not doing it.

Mr. McGuigan: I was wondering, by way of exploration, Bill 152--are all these three companion bills or are there just the two companion bills?

Mr. Offer: All three.

Mr. McGuigan: I was thinking that if we find we need more than two weeks, we could drop off, say, Bill 152.

Mr. Offer: I think the ministry would want all three bills to be looked at at once because they are all piggyback trucking.

Interjection.

Mr. Chairman: They are in tandem.

Mr. Offer: It is a three-wheeler.

Mr. Wildman: Tandem is two, not three.

Mr. Chairman: The chairman would appreciate a motion to deal with the bills in the order that appears to be agreed upon.

Mr. Gordon: Can we move then that we would have hearings on the transportation bills for approximately two weeks and that we would advertise

that we are going to hold public hearings? Of course, advertise public hearings for these transportation bills but also advertise that we are going to have public hearings on Bill 149 in the last two weeks of June, starting the week of June 21 and the week of June 28. Those two weeks would be--

Mr. Chairman: May I make a suggestion that we not put ourselves down on the dates for Bill 149? If you do, unless there is a prior agreement that the trucking bills will be finished on a certain date, you had better build that into your motion.

Mr. Gordon: I guess I leave myself open to hear what this committee has to say. I can stand the motion down for a moment and let you people discuss it. I want to hear the wisdom of the committee.

Mr. Pierce: I think there could be another problem here, and that is in knowing when the House is going to adjourn in June. If we are here, we could be here until maybe--

Mr. Wildman: We could be here into July.

Mr. Pierce: Maybe the members opposite could tell us when we will be leaving so that we can schedule our valuable time, but I am sure that is not possible.

Mr. Wildman: We could be here into July. That is possible.

Mr. Pierce: I have the same kind of fear the chairman does. Unless we can be assured we can travel while the House is in session--and that is normally not the situation or the case.

Mr. Chairman: May I suggest that a motion be put, maybe an all-encompassing motion, that states the committee will deal with the plant closures report first, the Workers' Compensation Board report second and that hearings begin on the transportation bills the week of--what is it?

Mr. Martel: Monday, June 8.

Mr. Chairman: The week of Monday, June 8, and that those hearings be restricted to two weeks here in Toronto.

Mr. Martel: If I could add a friendly amendment, the hearings on Bill 149 could commence the week of June 22 and June 29, exclusive of July 1. At least get the first two weeks opened up here in Toronto. If the committee is going to travel after that, god only knows, but it will not do it right away. It will take a break in the month of July anyway, regardless.

I ask the committee to consider those two dates, because we are going to be here until June 30 anyway. I realize about July 1, but if we want to get the hearings done in Toronto and then get out to the great north or Windsor or places like that, it is going to take some time to organize. If we could get a couple of weeks of hearings here in Toronto, where the big locals are--the representatives of the corporations and so on, be it the chamber of commerce or the manufacturers' association or small business, and the major headquarters of the big unions are here--we could start the process here in those two weeks and then look at some time in August maybe, if that great event has not been called.

Mr. McGuigan: I like the idea of July in the north.

Mr. Bossy: With blackflies?

Mr. Martel: You should not worry about blackflies. They are good for you.

Mr. Wildman: There are two seasons in the north: no flies and blackflies.

1620

Mr. Offer: Just on a point of clarification, when you talk about the hearings, my understanding from the ministry is that two weeks would be sufficient for the representations and the clause-by-clause discussion.

Mr. Chairman: Say that again.

Mr. Offer: The two-week allocation would be sufficient for not only the representations but also the clause-by-clause.

Mr. Chairman: I do not know how the ministry knows that.

Mr. Offer: I have taken into account the possibilities, but I did not want the motion to be just for hearings. If it turns out that the anticipation by the ministry is indeed correct, that maybe there are not going to be many representations--I do not know--the committee would not be pre-empted from going into a clause-by-clause analysis of the bills. I just did not want the word "hearings"--

Mr. Chairman: You want it to be "hearings and clause-by-clause debate"?

Mr. Offer: Correct.

Mr. Chairman: Okay. That should be in the motion then.

Mr. Pierce: I am a little bit concerned, the advertising not being done, that we get into a situation where we have more people before us than you anticipate. It is fine for the ministry to say, "We think you can do it all in two weeks and that is the way it should be done," but what happens if we have a committee room full of people who want to make presentations, like we have had in the past, and we say: "We are sorry, guys. We have a two-week schedule. That is the end of it. We have to do clause-by-clause now. It was nice that you dropped in, but you are not going to be heard"?

Mr. Wildman: In that case, perhaps you can put it off.

Mr. Chairman: The other problem is the length of time it takes to get the advertising in place. We really have to be scrambling to get the ads out in time and to give people any kind of decent notice. We can notify the groups that I assume the ministry or Mr. Offer has a list of.

Mr. Offer: I will provide the list to you.

Mr. Chairman: We could start with them at the same time we are doing the advertising.

Mr. Bossy: Just on a point of order or a point of clarification: Forgive me; I have not been here that long to know, but has it not been normal practice for government bills to take priority over private bills?

Mr. Chairman: No. The committee can establish its own priorities.

Mr. Bossy: That is not diminishing the urgency.

Mr. Chairman: No. I understand what you are saying, but the committee can make that determination itself. As far as I know, there is no history or tradition of that.

Mr. Bossy: What did the previous government do?

Mr. Gordon: Might I suggest another angle you can look at? You have some leeway between your transportation bills and Bill 149. Perhaps what you could say is that we will take the week of June 22 and have people from the Ministry of Labour come in to give us an in-depth understanding of occupational health and safety.

Mr. Pierce: That should take half an hour.

Mr. Gordon: Let me finish; or other so-called experts, in order to make sure that all members of the committee understand occupational health and safety, etc., as well as some of the others. In this way, what you would be doing is building in a little buffer there, but you would still be dealing with Bill 149.

In the event that the transportation bills take a day or two longer, you are not stuck with having advertised, having people coming in on Bill 149 and having people still hanging around on your transportation bills. I just put that out. I am not saying this is the way we should go. I certainly look to the government or the chairman, who are much more knowledgeable than I, to make decisions on this.

Mr. Gordon: We are lulling ourselves to sleep.

Mr. Chairman: Any other comments? We are going to try to put together a motion that is a bit of an amalgam. Todd, can you read it? Let us see how it fits.

Clerk of the Committee: The motion would be for adoption of the following schedule: that the committee commence its hearings on plant closures for approximately two days, followed by approximately two weeks to finalize the Workers' Compensation Board matter. Then, starting approximately Monday, June 8, the committee would commence two weeks of hearings on the transportation bills, and that two weeks would include clause-by-clause consideration, to be followed by Bill 149, starting with the week of June 22 and the week of June 29.

Mr. Chairman: That is sort of an amalgam. We need somebody to move it as read.

Mr. Pierce: I am still concerned that we could have people who have not been heard here on a transportation bill. I would go along with the resolution, subject to hearing at least the people who have given an indication that they were going to present themselves on the transportation bill. I would just hate to see us close the door again on a bunch of people

who are sitting here. I do not want to go through that again and I am sure the chairman does not want to go through that again.

Mr. Chairman: I do not want to see it again. One thing we can attempt to do is have the clerk of the committee direct people who want to make presentations to their umbrella groups, such as the Ontario Trucking Association, if their interests are represented through their umbrella, and try to head off too many individual presentations. We will try very hard to do that so that it gives us time for the clause-by-clause as well.

Mr. Pierce: We have to give recognition to the fact that we are doing the transportation bill at the busiest time of the season for the transportation industry. Anyone who has wheels is out there working them.

Mr. Chairman: Okay. Can someone move that motion?

Mr. McGuigan: Will we meet three days a week?

Mr. Chairman: Presumably. We have not got our instructions from the House leaders yet.

Mr. Gordon: What are we looking at? Run that by us again.

Mr. Chairman: Do you want the motion read again?

Mr. Martel: No, he is asking about the three days a week.

Mr. Chairman: What were you asking, Mr. Gordon?

Mr. Gordon: I am just trying to figure out whether this committee has decided how it is going to avoid what Mr. Pierce is worried about.

Mr. Chairman: We are going to fret about it.

Mr. McGuigan: We do not want to cut anybody off.

Mr. Bossy: After the first week of the hearings being advertised, we would have a very good handle, as far as the committee is concerned, as to the numbers of representations. Then maybe we could have the ad hoc or whatever committee decide on what format we should take from there on to try to come to a conclusion and be fair in representation.

Mr. Martel: Sure. What the member is saying is, once you do the advertising, you are going to get responses within four or five days. Then you will know. You can leave the motion as is. If you have to adjust it before you advertise for the Bill 149 hearings, you can make the adjustment then.

Mr. Bossy: I am sure we can agree in this committee to--

Mr. Chairman: Who is going to be sticking with the committee right through the plant closures, WCB and trucking?

Mr. Bossy: I am hoping to.

Mr. Chairman: Mr. Wildman, are you going to be staying with the committee through the whole process?

Mr. Wildman: I would be, unless there was someone who specifically

wanted to replace me, say, on the WCB stuff since I was not here for the hearings.

Mr. Chairman: The reason I raised it is that we may want to strike a steering committee at some point.

Mr. Bossey: If an election should be called, I will have to look for a replacement.

Mr. Martel: Me too.

Mr. Chairman: Does everyone understand the motion? Do you want it read again?

Mr. Pierce: Yes.

Clerk of the Committee: The motion is for adoption of the following schedule: The committee will spend two additional days to finalize its plant closures report. It will then spend the following two weeks to finalize its report on the Workers' Compensation Board. Then, commencing the week of June 8, the committee would start hearings on the three transportation bills for two weeks, and that two weeks would include the clause-by-clause consideration. Then, starting the week of June 21, for two weeks, hearings in Toronto on Bill 149.

1630

Mr. Chairman: All right. Will someone move that motion? So moved by Mr. McGuigan.

All those in favour? Opposed?

Motion agreed to.

Mr. Chairman: We can begin the process. We will distribute the copies of the plant closures committee report.

Mr. Offer: There is also Bill 9, which has not been discussed. I am wondering whether we are going to discuss it.

Mr. Chairman: I do not know when we can deal with it.

Mr. Offer: It is on the agenda.

Mr. Reville: The two weeks following June 27.

Mr. Chairman: Right.

Mr. Offer: Do you want to do that?

Mr. Chairman: It is still referred to us, so it is still on our agenda.

Do I read the committee correctly that it does not want to deal with this plant closures report today, that it will use today as primarily an organizational meeting and that tomorrow it will meet after question period?

Mr. Bossy: For the first meeting, I will be replaced.

Mr. Chairman: No problem. Do you wish to meet in camera tomorrow or in an open meeting? We are going to be dealing with the report on plant closures.

Mr. Reville: In camera.

Mr. Chairman: Consensus? Okay, we will meet in camera tomorrow to work on the report. Does everyone have a copy? Is there agreement that we should not release the report?

Interjection.

Mr. Chairman: Order. Mr. Gordon, is there agreement that we do not release the report until it has been tabled?

Mr. Gordon: Yes.

The committee adjourned at 4:32 p.m.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT
ANNUAL REPORT, WORKERS' COMPENSATION BOARD, 1985
WEDNESDAY, JUNE 3, 1987

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, F. (Nickel Belt NDP)

VICE-CHAIRMAN: Reville, D. (Riverdale NDP)

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Wildman, B. (Algoma NDP)

Substitutions:

Cooke, D. R. (Kitchener L) for Ms. Caplan

Gillies, P. A. (Brantford PC) for Mr. Pierce

Mackenzie, R. W. (Hamilton East NDP) for Mr. Reville

Mackenzie, R. W. (Hamilton East NDP) for Mr. Wildman

Clerk: Decker, T.

Staff:

Madisso, M., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, June 3, 1987

The committee met at 3:24 p.m. in committee room 1.

ANNUAL REPORT, WORKERS' COMPENSATION BOARD, 1985

Mr. Chairman: The committee will come to order. I thank members for their patience. Today we have to deal with the motion by Mr. Gillies dealing with the Workers' Compensation Board. I would like to think that after that we could talk about the committee's agenda both as it deals with the trucking and Mr. Martel's health and safety bill. Then the whip indicated to me that he would very much like to know if this committee could give him some kind of an agenda for September.

Mr. Bernier: What about July and August?

Mr. Chairman: That is up to us, but there seemed to be a feeling that most members did not want to sit in July and August.

Can we deal first with Mr. Gillies's motion. Does anyone have a copy of it? Do you wish to move it, Mr. Gillies? It was put before us as a notice of motion.

Mr. Gillies: Thank you, Mr. Chairman. I so move.

Mr. Chairman: Mr. Gillies moves that this committee instruct the chairman to correspond directly and immediately with the Premier of this province, recommending that a royal commission be established to undertake a comprehensive and exhaustive review of the workers' compensation system in Ontario, with the objective of making recommendations to the government for a new Workers' Compensation Act designed to replace the Workers' Compensation Act of 1915, and that the commission's terms of reference include the development for Ontario of a comprehensive universal accident and illness insurance plan.

Mr. Gillies: I will speak very briefly to it, Mr. Chairman, because we did have quite a debate on this when it came forward as a notice of motion.

Our intent is not to institute just another review of another aspect of the existing system. We are not talking about the kind of ongoing review and fine-tuning if you will, that the WCB system has been through. What we are proposing is an exhaustive study and an exhaustive set of recommendations with an eye to instituting a new system, one that is designed today to meet the needs of the coming decades and not, if you will, trying to construct further on a system which has been in place and amended at various times since 1915.

There are a couple of reasons why we are putting this forward. It is clear that there is a great deal of unhappiness on both sides of the fence with regard to WCB, although there have been very worthwhile reforms brought in over the last number of years, most of which our party has supported. But we sense that what we have now is increasingly taking on the characteristics of a universal type of plan.

We see decisions coming down now from the Workers' Compensation Appeals Tribunal and elsewhere in which there is compensation of people for types of afflictions and problems which may or may not be directly traceable to the work place. I want to say right off the bat that it does not offend me in the least that we offer whatever protection we can for people in need, regardless of the source of that injury. We have to wonder whether a system designed initially to compensate for work place injuries--and long before society even contemplated the question of occupational disease--and a system funded entirely by premiums paid by employers is really suitable to meet this need.

That is why our party was most receptive when I moved the original motion and the New Democratic Party House leader, Mr. McClellan, asked if we would accept an amendment that this full-scale inquiry look at the question of a universal plan. We said, yes, let us look at that. Without prejudging what the royal commission might say, it may be that the time has come to set up a new system to protect people and that a royal commission could recommend just how such a system would be funded.

It is not my intent now to go over again all the arguments about increased costs, the increased length of time for adjudication and the increased bureaucracy. We have been through all that. That restates briefly where we are coming from, why we were happy to accept the NDP amendment and why I really hope that this committee might offer unanimous agreement to this motion.

I really think that the minister then could take it to the Premier (Mr. Peterson) and say, "Look, one of our all-party committees really thinks it is time to take a look at this right across the board and see if we can come up with something better." That would be a very powerful mandate indeed to hand the Minister of Labour (Mr. Wrye) and the Premier.

Mr. Chairman: Thank you, Mr. Gillies. Any comments?

1530

Mr. Mackenzie: Just briefly, Mr. Chairman, we support the motion. We would not have been supportive of simply another study per se of the WCB. We have had commissions and studies of the board ad nauseam over the last few years. A number of good recommendations have been made, some of which have been carried out and some of which have not. Committees of this House have looked at the WCB annual report and made recommendations, once again, some carried out and some not.

We have the landmark cases and problems, such as the recent Villanucci case. We have the continued use of the meat chart approach, which really disturbs a lot of people. We have already one of the good reforms, the operation of worker advisers in the province now in a situation where most of the industrial centres are totally overloaded.

I think I gave in the House the other day an example in my town where a worker, who had had an accident and had also been exposed to one of the highest noise areas of one of the steel mills, finally was sent in to the worker adviser office. He was told by the chief worker adviser in Hamilton: "Sorry. I have a case load of 150 cases. Put your name on the list and in six months we may be able to talk to you." It just does not make any sense at all. Then we have recent examples of friction on some of the rulings between the appeals tribunal and the board itself.

It seems to us that what we do need is a commission that looks at the whole question of coverage. That does not mean that we have any preconceived hard opinions in the way of financing. We think you can incorporate methods of paying for this kind of a scheme in the charges to much of the industry in the province, even though the industry is also complaining about some of the costs, because there is a factor of deterrence and improved safety features.

It is obvious to us that just another shakedown of the current act is not good enough and that the terms of reference have to be broad enough to look at whether there is any merit in another approach. The only one I know anything of, and it has some very good points as well as some weak points, is the New Zealand approach that you yourself, Mr. Chairman, have reported on to this committee. But it seems to us that it should be a royal commission with fairly broad terms of reference. That is the only kind of a study that we would be supportive of in this party.

Mr. Gordon: I have to concur with what Mr. Mackenzie says when he talks about the meat chart and when he talks about the worker advisers. I know in my riding in Sudbury we have not found worker advisers are giving us any relief. As a matter of fact, we find that our case load at the constituency level has increased. We have found too that the worker advisers are overloaded with cases. In looking at the kinds of benchmark decisions that are being made by the present WCB tribunal, it is quite evident that we are going to have to move away from the current system.

I would like to say this: I believe that the WCB is failing in its commitment to both injured workers and employers. If we are going to meet the demands of social justice over the next 50 or 60 years, we are going to have to find a new system. Mr. Gillies's motion to have a royal commission on this matter and to look specifically as well at a comprehensive, universal accident and illness insurance plan is a welcome motion from my perspective.

I would just like to put a few facts on the table at this time, facts that our party is well aware of. First of all, when we look at the whole question of how workers are handled by the WCB, in spite of all the reviews that have taken place over the years of the WCB, including the Weiler report, and in spite of the huge increase in staff over the past decade, the present system still does not offer fair and just compensation to injured workers.

The meat chart approach to determining levels of compensation, the inhumane treatment workers face at the Downsview Rehabilitation Centre and the increasingly complex and legalistic nature of appealing decisions have made the system unworkable for the injured worker. In the past, in the first six months of 1986 alone, the WCB was paying benefits to 90,000 workers.

The system is equally intolerable to employers. A recent survey by the Canadian Federation of Independent Business found that the WCB is the major concern of 41 per cent of its Ontario members. Rates have continued to rise with claims lasting longer, yet service to employers deteriorates. It is obvious that with the unfunded liability growing by over 1,000 per cent in the past decade to an amount nearing \$6 billion, a shift in direction is needed.

Because of the increased injuries and illnesses, 442,000 accidents in 1986 in the work place, compensation costs are soaring. As the Labour critic, I can tell you that with the number of accidents that have been occurring within the mines and the number of deaths, it is very sobering and very worrying for us as a party.

One billion dollars in direct compensation benefits were paid out in 1985. Indirect costs would be four to seven times that, given the cost to the medical system, social insurance, lost productivity, retraining, etc. Therefore, some \$4 billion to \$7 billion is lost as those costs continue to grow. Employers' premiums have jumped 15 per cent a year and are up almost nine per cent further in 1987. This is double the inflation rate and ahead of most companies' annual sales increases.

Just to talk about the mining companies, they have contributed \$616 million to the WCB in the past 10 years, of which only about \$405 million went to workers in the form of benefits. Over \$200 million went to WCB operating costs. In other words, it costs the WCB \$1 to give out \$2. The time has come for a comprehensive, in-depth royal commission to look at the WCB.

Mr. Offer: I am speaking against the motion and I am urging the those members who have said that they are going to be voting in favour of it to reconsider. The reason I am speaking against the motion--and I know much of this was discussed when we last discussed this motion as a notice of motion--my concern is not that there is not change and modification improvement required under the workers' compensation system, but that change and improvement in evolution is, in fact, taking place. It might not be as fast as some would want, but it is undeniable that it is taking place.

We have heard even today allusions to the office of the worker adviser and the office of the employer adviser, which are new initiatives. The Workers' Compensation Appeals Tribunal itself is a new initiative. It is an improvement to the system. As time proceeds, it becomes an even better forum, better able to address the needs of those for whom it was set up.

We have had some real change and some real improvement to the system. The linking of the WCB benefits to the consumer price index, the complete reorganization of the board with a new chairman and a new management team, all are designed for better, quicker and more efficient service to those who need it. We are certainly not yet at the end result, but we are moving in the right direction.

My position is that the passage of this motion will very quickly put a halt to real improvement, to real change, to the particular system. As more and more time elapses, we will wait for the royal commission. We will address our concerns to the royal commission. We will wait for the report of the royal commission. That will take five or six years.

What happens after that time elapses? We will assess the recommendations of the royal commission. We will take a look at what the royal commission has recommended. More and more time will have elapsed. I think history shows that there would be nothing more than minor tinkering to assist them, when we need the type of change and evolution which we have seen in the last while.

I would ask those members of the committee to vote against the motion, vote against it because this motion will, if passed, effectively in a very short period of time put a halt to changes and improvements which are yet to come.

1540

More and more we will be focusing our attention on the royal commission, on its deliberations and its report. Real change and real improvement will not and could not come before that report of the royal commission is issued and analysed.

I think that the process of change and improvement will on the passage of this motion be set back for many, many years--the process of change and improvement which is necessary on a day-by-day basis.

It is for that reason that I speak against this motion, and I ask members of the committee to do so.

Mr. Wildman: Very briefly, I must say that I am not in agreement with Mr. Offer. I will not reiterate what has been said so far, but in our view, the recommendations of the Wyler commission were not adequate at all, and the changes that have taken place have not been nearly fast enough.

The idea that asking for a full-scale inquiry that may look at an alternative approach to dealing with accidents and covering workers' loss of earning capacity would hold up the changes that are now taking place ignores the fact that these changes have been very slow.

We are still using the meat chart in northern Ontario as I am sure they do in other heavy industry areas. Workers are continually advised that they are able to do light duties when everybody, including the medical practitioners, are aware that there is not any light duty available. It is just not acceptable in my view for workers to be told that they have a 10 per cent or a 15 per cent or a 20 per cent or a 25 per cent disability, for instance for a back, and told they can do light duty when they have worked all their lives underground in a mine or in the bush and that is all the training they have, and they do not get the proper vocational rehabilitation or they are not capable of it, and they are expected to live on these very low benefits and to support their families. It is just not acceptable. Also, workers who have not had these kinds of problems are tending to continually face delays in receiving benefits, such as administrative foul-ups and so on.

It is not just the workers who are having difficulties, as has been said. The business community is certainly not satisfied with the workers' compensation system. You, Mr. Chairman, will be aware, I am sure, of the problems that small logging operators and truckers in the bush have had with the experience rating system and the tremendous increases in the levies for those employers under that system. Those employers are finding it very difficult to make the kinds of payments that the increased levies are requiring and at the same time stay in business and employ workers.

The office of the worker adviser has been expanded, it is true. It is a very good thing, but in Sault St. Marie we have not even had one established yet. We have been promised that an office will open this year. We are informed by the office in Sudbury that office is already six months behind and it has not even opened yet.

We do support the motion. I hope that the Liberal Party would agree that having a full and open airing of all of the issues related to this, whether it affects the workers themselves, the employers, or the relationship between government in dealing with accident and illness coverage in this province, would be beneficial, and, hopefully, would make recommendations that could be acted upon that will lead us into a new system that will serve us in the 21st century rather than simply tinkering with one that was set up not long after the end of the 19th century.

Mr. McGuigan: I have no quarrel at all with the idea. I think the motivation behind it is great. We all agree that we have a very serious problem with accidents and with the operation of the board. That has to be

addressed directly, not five or six years from now. It has to be hit with a sledgehammer and I believe those things are happening. We had a gentleman in telling us about what they had discovered about the Workers' Compensation Board. Basically it has not changed in its organization since the day it was formed and our government is going at that and making changes. I realize of course you do not see immediate results and it takes time to go through the processes of the bureaucracy. I believe our government is determined to overhaul this thing and make it work.

When you look at the costs. I appreciate those figures of \$1 to get \$2. Perhaps the only thing a royal commission can change on that, because anything that is run by the government cannot afford to be as arbitrary as say a private insurance company. When you deal with a private insurance company they say, "Here it is. Take it. If you do not like it, sue me." For this organization and any government-run program you have to have a system of appeals and there are appeals on the appeals. Those things do take a lot of money, but at that same time, they afford the injured person a second day in court and possibly a third day in court.

I do not know how a royal commission would change that. Another thing it will not change is the increasing ability of the medical profession to try to bring people back to their former state of health and the sophistication of it and the cost of it, is beyond almost any government to keep up with the medical costs, not only in this field but in the general health care field. These costs are galloping along at such a horrendous rate. Of course we are all pleased that people who recover from their injuries and their illnesses as a result of all of this. I do not see anything that a royal commission could change in those particular areas.

I want to repeat that the problem is now. It is not five or six years from now. It must be addressed directly.

Mr. Bernier: If I could add my voice of support to the resolution and in a sense defend some of the things that have happened over the year with the Workers' Compensation Board and its reformed attitudes. In many instances they have tried to improve. I know in my own case, offices have been moved into the Thunder Bay area with worker advisors, employer advisors. Things are improving.

What really bothers as the member for Kenora, is the number of cases I am getting. It is not decreasing, but increasing. I get very concerned through all the studies that we have had, through all the reforms that have been brought in over the last several years, still my caseload is increasing. There is something wrong. I am getting referrals from the Minister of Northern Development and Mines, who cannot handle it through the northern affairs officer. I am getting referrals from the Ombudsman's office, who just threw up their hands. It is more time consuming to my staff.

It leads me to believe that it is time for an overhaul review of the Workers' Compensation Board, the whole aspect of it. I commend the workers in the system who try to resolve some of the issues that I bring forward to them, but I think they need some new direction and a whole new format. On that ground alone I am prepared to support this resolution for an exhaustive review through a royal commission.

1550

Mr. Chairman: Are there any other questions? If not, people

understand the motion. It is quite clear. I do not think we need it read again.

The committee divided on Mr. Gillies motion which was agreed to on the following vote:

Ayes

Bernier, Gillies, Gordon, Mackenzie, Stevenson, Wildmen.

Nays

Cooke D. R., McGuigan, Offer.

Ayes 6; nays, 3.

Mr. Chairman: May I suggest that this motion be put in as part of the report, but not with the indication that it is unanimous. Right? We agreed on all those other recommendations the other day. The ones we went through one by one and there was unanimous agreement on those, but that this be put in with the comment that there was division on the committee, but the majority supported the motion as put by Mr. Gillies. Is that okay?

I have to tell you, as we move to the discussion of the agenda for the committee, and I mean this most seriously, if I had my way around this place, this committee--now that the vote is over I can say this--would go to New Zealand in September. I kid you not. I was there last September as part of a trip I made to Japan and New Zealand. I did not say this before you voted because I did not want to influence Mr. Offer. If the Legislature would allow us to go there to look at the system they have, which is the system as amended by Mr. McClellan, it is a very fascinating process. It is not without its problems. I am not suggesting that but it is much more "socialistic" but nevertheless, it address the particular problem that we are wrestling with in Ontario.

Mr. Bernier: Would the committee consider sending one or two delegates like myself and somebody else?

Mr. Chairman: There is a long history--

Mr. Gillies: It is my motion.

Mr. Gordon: But you are not the labour critic any more.

Mr. Chairman: I do not know whether it would be allowed but I would not blush in making that recommendation or defending it in public about that kind of visit.

Interjection.

Mr. Chairman: Yes, anywhere, any time, any place. I think it is appropriate.

Let us talk about the agenda. I should tell the members of the committee because sometimes things are referred to the committee very quickly without much discussion, that the following have been referred to this committee:

An Act respecting Environmental Rights in Ontario, that is Mrs. Grier's private bill; An Act to encourage the Rehabilitation of Water Delivery Systems

in Ontario, I thought it was Mr. Bernier's but it is not--it is Mrs. Marland's--just teasing Mr. Bernier; there is already Mr. Martel's on occupational health; the three trucking bills plus the Dangerous Goods Transportation Amendment Act; plus about 20 forest management agreements that have been referred to this committee--maybe more than 20--there is a whole slew of them; plus the Ontario Hydro annual report; plus--are you ready for this one--the Ontario Stock Yards' board's financial statement has been referred to this committee.

Those are the things that have been referred to this committee. If this committee wants to carry the tradition of setting its own agenda--it could decide here and now if it wants since there are more members of the committee here now than usual--first, when we want to be available to have any kind of sittings and what we want to deal with.

Mr. Stevenson: Most of those things could be dealt with on the plane on the way to New Zealand.

Mr. Chairman: Right.

Can we deal first with when members want the committee to sit. Do you want any hearings at all in July or August?

Mr. Bernier: It is the government's position that there are going to be no committees struck.

Mr. D. R. Cooke: The New Democratic Party is proposing that at the House leaders' meeting tomorrow.

Mr. Gillies: No committees July and August.

Mr. Bernier: Why?

Interjections.

Mr. Offer: I think you have to be fair about this. My understanding is, in all fairness, that it was an agreement, which is up to the House leaders, by all of the whips that there would not be committee sittings in July and August. That is my understanding and I know it is subject to the House leaders but I do not know if one should be casting it at somebody else or whatever, but that is my understanding.

Mr. Chairman: Sorry. I missed part of that.

Mr. Offer: That it was--

Mr. Reville: An all party consensus.

Interjection: The whips have agreed, but the House leaders have not yet?

Mr. Offer: I understand that the whips met today and that the House leaders meet on it tomorrow. It is not necessarily the initiative of one particular party or another; rather, all three have said there would be no sittings during the months of July and August.

Mr. Bernier: That could be a precedent.

Mr. Mackenzie: In practical terms, most of us would not mind getting a bit of a vacation or rest for the month of July and a practical person would rather be in his riding in August than be here on committees.

Interjection: I think that was the real reason.

Mr. Chairman: There is one fly in the ointment: how we deal with the transportation bills. I remember the day very clearly. You may recall that the committee made a commitment to deal with transportation for two weeks and with Mr. Martel's bill for two weeks, which would have taken us to the very end of June or the first week of July of something like that. That was two weeks each.

There are enough briefs already on the trucking bills to fill up two weeks of hearings, give or take an hour on the odd day, and there are twice as many people, about 30, who have indicated that they want to present briefs on Mr. Martel's bill. It seems to me there are two ways of handling that.

The first is to deal only with the briefs or the public hearing aspect and not do the clause-by-clause. That means it would not get reported back this session which would cause some problem to Mr. Fulton. The other is to do the same with Mr. Martel, to hold what time is available for hearings and then schedule whatever is left for September. It is in your hands. Plus there are the other reports I mentioned to you that you may want to deal with.

Mr. Mackenzie: There were discussions of some length in this committee and I thought there was pretty general agreement that we did not want the trucking bills at all. Obviously, the government did and two weeks could be allotted to them. Mr. Martel's was the next bill on. There was also discussion that we would do what we could not to sit in July and August. I think that is a pretty general agreement that has been worked on. It seems to me that we may have an obligation to deal with that kind of schedule as far as the end of the session goes and then just schedule--it looks like it would be a continuation of Mr. Martel's, as the first item, much as I would like it to be on right now.

Mr. Offer: With respect to notification for Mr. Martel's bill and submissions, it is my understanding--I would just like clarification--that a date was not given to the potential deputants as to when they would come before the committee. I would like to get clarification or verification of that.

Mr. Chairman: The ad did not give any dates. The transportation people have been slotted in, starting next Monday. There is no problem there. All we have at this point--correct me if I wrong--on the health and safety briefs is that they know their briefs have been received and that they will be given a date. Nobody told them it would be in June, July or September. That can be handled.

One way that would ease the pressure a bit would be to deal with the trucking bills. I do not know how strongly the government members want the clause-by-clause dealt with and the bill reported back. I do not have a sense of that. Do you know, Mr. Offer?

Mr. Offer: It is extremely important because it is part of a national type of agenda. The government views it as very important that we deal with the trucking bills. I remember very well that I indicated that as far as the information I have been given is concerned, it would be just about two weeks. I understand also that when we finally made the decision, it was

still left open-ended so that we were not totally fixed into a particular period of time. It is part of a national agenda. It is something that is done in conjunction with the federal government and with all the other provincial governments. It is an initiative that, in fairness, I believe was commenced by the previous government. There is agreement generally with respect to the content of the legislation. I suggest we do the hearings, go into clause-by-clause and report the bill back to the House.

1600

Mr. Chairman: For the information of the members, we can finish off the briefs we have so far received by June 17, which would leave us June 18 for clause-by-clause.

Mr. Bernier: Sitting three days a week.

Mr. Chairman: Yes. I do not know to what extent there will be extensive debate on clause-by-clause. Nobody wants to restrict it. I just do not know what the members will be doing.

Mr. Offer: Of course, I cannot give any assurance, but you will be able to help me on this. Initially, a report was done in 1982-83-84. It was followed by a draft bill. Some refinements have been made to the bill. There has been no indication from either of the parties--of course, this is without the public hearings--that there would be any amendments to any of the sections. It seems to me that the clause-by-clause could be done somewhat quickly.

Mr. Chairman: It is three bills in one day.

Mr. Mackenzie: Regardless of my feelings about the bills, which at this stage does not count in terms of scheduling the thing and I understand that, we are prepared to accept proceeding with the transportation bills on the basis of the two weeks, and that the hearings and the clause-by-clause are finished in that period. If it has to go longer than that, then the rest of it has to be scheduled when we come back some time in September.

Mr. Chairman: Okay. The minister has indicated he has some amendments that he will be tabling with the committee on the first day.

Mr. Stevenson: We have not really talked about playing with the schedule. I know the original agreement was two weeks. Certainly, I think we would want to see Mr. Martel's bill started before we leave here; there is no question about that. If it is a matter of losing one day to try to accommodate the transportation bills, I think we would go along with that. I think that was basically your second alternative that you suggested, Mr. Chairman. In the interests of getting it through, I think we would go along with that. I would not, however, want to be in a position that the transportation bills took all the time we had left and not get the opportunity to get at least some initial presentations on Mr. Martel's bill in front of the committee.

Mr. Chairman: Thanks. We have a practical problem. We have to schedule people to come before the committee. We cannot leave them hanging out there, saying "maybe; maybe not," so could we make an arbitrary decision--I know it is dangerous--that we will deal with the transportation bills in those two weeks? That allows the Thursday for clause-by-clause. Do you want to take the Monday following as well, to cut into that one day of the health and safety bill for clause-by-clause to give us that little bit of leeway? There

would not be hearings in either case, but it would give us the two days. One day for clause-by-clause on three bills; I am nervous.

Mr. Gillies: That sounds reasonable. Give yourself a bit of (inaudible) and then start into Mr. Martel's the following day.

Mr. Chairman: That following day becomes Wednesday, June 24. The House is tentatively scheduled to adjourn on June 25, so what that really means is that we are scheduling two days of hearings just to get them started. I guess we could arbitrarily select some of the bigger umbrella groups and tell everybody else he is scheduled in September. Do you want that to be the first item of business in September?

Interjection.

Mr. Chairman: The finishing of the health and safety bill.

Mr. Offer: My suggestion would be beginning of the health and safety bill in September.

Mr. Chairman: We are using two days in June.

Mr. Offer: I have no problem with that. My number one concern is making certain we finish the transportation bills and clause-by-clause.

Mr. Chairman: I understand.

Mr. Mackenzie: I would willing to go along with it as long as it was clear that we were going to start Mr. Martel's bill following--

Mr. Chairman: We would schedule hearings so we would not be able to go back on it them, because that would not be fair to--

Mr. Gillies: I agree. If you invite people from all over the province to speak about Mr. Martel's bill, I do not think it is fair to tell them at the last minute that no, it is September. If the clause-by-clause on the transportation bills cannot be done in two days, then I suggest either it is reported back and let them do it in committee of the whole House or you carry on with the Martel bill and try to find some more time to finish the transportation bills. I cannot imagine, if they are fairly straightforward, as Mr. Offer said, that you could not do it in two days.

Mr. Chairman: All right. Is there consensus? Are we in agreement? We will do the transportation bills for two weeks. We will have Thursday, June 18, allowing June 22 for further clause-by-clause. We will schedule hearings for Mr. Martel's bill on Wednesday and Thursday, June 24 and 25. We will conclude the health and safety hearings in September after Labour Day.

Interjection.

Mr. Chairman: It is still my first.

Interjection.

Mr. Chairman: But you would not object to some lobbying to do some travel. Any further business?

The committee adjourned at 4:06 p.m.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

TRUCK TRANSPORTATION ACT
ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
HIGHWAY TRAFFIC AMENDMENT ACT

MONDAY, JUNE 8, 1987



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, F. (Nickel Belt NDP)
VICE-CHAIRMAN: Reville, D. (Riverdale NDP)
Bernier, L. (Kenora PC)
Caplan, E. (Orillia L)
Gordon, J. K. (Sudbury PC)
McGuigan, J. F. (Kent-Elgin L)
Offer, S. (Mississauga North L)
Pierce, F. J. (Rainy River PC)
South, L. (Frontenac-Addington L)
Stevenson, K. R. (Durham-York PC)
Wildman, B. (Algoma NDP)

Substitution:

Ramsay, D. (Timiskaming L) for Ms. Caplan

Also taking part:

Gregory, M. E. C. (Mississauga East PC)
Pouliot, G. (Lake Nipigon NDP)

Clerk: Decker, T.

Witnesses:

From the Ministry of Transportation and Communications:

Fulton, Hon. E., Minister of Transportation and Communications (Scarborough East L)

Smith, T. G., Assistant Deputy Minister, Safety and Regulation, Registrar of Motor Vehicles

From the Ontario Trucking Association:

Cope, R. R., President

Sanderson, J., Chairman, OTA Regulatory Overview Committee; Vice-President, Public Affairs, CP Trucks Ltd.

Bradley, D., Director, Economics and Executive Assistant to the President

From the Ontario Dump Truck Owners Associations:

Sauve, L., Executive Director; Executive Director, Greater Ottawa Truckers Association

Jones, N., Business Manager, Nipissing and East Parry Sound Truckers Association

Davis, J., Business Manager, Greater Northern Ontario Trucking Association

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, June 8, 1987

The committee met at 3:37 p.m. in committee room 1.

TRUCK TRANSPORTATION ACT
ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
HIGHWAY TRAFFIC AMENDMENT ACT

Consideration of Bill 150, An Act to regulate Truck Transportation; Bill 151, An Act to amend the Ontario Highway Transport Board Act; and Bill 152, An Act to amend the Highway Traffic Act.

Mr. Chairman: The standing committee on resources development will come to order. We will be holding hearings on three transportation bills: Bill 150, An Act to regulate Truck Transportation; Bill 151, An Act to amend the Ontario Highway Transport Board Act; and Bill 152, An Act to amend the Highway Traffic Act.

We have been given this week and most of next week to deal with these public hearings. It looks as though we are going to be able to fit most of the groups in during these two weeks. It is not a lot of time, but it is the time we have been assigned.

It is our hope at the end of next week to deal with clause-by-clause and with any amendments the minister might have to the three bills or that opposition members might want to move.

Today, we will hear from the Minister of Transportation and Communications, the Ontario Trucking Association and the Greater Ottawa Truckers Association. Without any further preamble, I will welcome the groups here and ask the minister if he has some opening comments to make.

Hon. Mr. Fulton: Thank you. First, I would like to introduce Tom Smith, who technically is the former assistant deputy minister with the ministry. He was formerly responsible for the safety regulations. He is now with GO Transit, as you probably well know.

With Tom is Jeff McCombe, the director of legal services with MTC.

It is my pleasure to introduce for committee study a proposal to reform the economic regulation of the trucking industry in Ontario. The reform package complements similar federal legislation which has been put forward by the federal government. In comparison to the federal Motor Vehicle Transport Act, which will govern the interprovincial and international movement of carriers, the reforms which I am introducing refer only to the operation of trucks within the province of Ontario.

The need for reform stems from the inadequacies of the present Public Commercial Vehicles Act, which in spite of Band-Aid attempts is outdated and fails to recognize current needs and marketplace realities.

A major thrust of the reform package, in addition to economic deregulation, is the improvement of truck safety. To this end, licence applicants will be assessed by means of a fitness test. The actual performance

of all carriers, both for-hire and private, will be monitored through the commercial vehicle operators' registration. This program, to be implemented through Bill 152, will contain penalties such as suspension and cancellation of operating privileges for the continued violation of applicable laws.

Increased competition, lower costs and improved services are some of the anticipated economic gains which will be derived from the Truck Transportation Act. As a result of lower transportation costs, a relative decline in the cost of goods can be expected. This will increase the competitiveness of Ontario's products, which will then stimulate the economy and create more jobs in the manufacturing sector.

Accompanying this economic growth, there will be an increase in the opportunities available to small business. The legislation will allow for easier entry and will encourage the growth of both local and specialized carriers able to serve the needs of the community. This will be particularly beneficial for northern Ontario.

The new legislation will encourage new and innovative trucking services to a marketplace which has increased its demands for tailored, specialized and efficient services. The maintenance of a dependable trucking industry responsive to the needs and trends of the market is the expected result.

Safeguards have been built into these reforms to facilitate the smooth transition and operation of these programs. A public interest test will be available to ensure that severe market disruption does not occur.

Bill 151 will adjust the authority of the Ontario Highway Transport Board to enable it to conduct disciplinary reviews. A new appeal system is created, eliminating petitions to cabinet. The establishment of an advisory committee will provide for the continued monitoring of the implementation process.

As a result of further industry input and discussions since first reading, a number of amendments have been prepared. I would like to distribute these at this time so that the government's intent is clear to everyone concerned. I intend to have these amendments moved during the clause-by-clause debate scheduled for June 18.

In summary, I would like to point out that these reforms are the product of many years of consultation and research. All sectors of the trucking industry have taken the opportunity to contribute to the creation of this legislation. As a result, these proposals represent a good consensus and a thorough understanding of Ontario's trucking industry.

I have the amendments at the table here.

Mr. Chairman: I will distribute these when the clerk gets back.

Mr. Pouliot: Thank you for the opportunity to say a few words regarding the three bills that are being opened for public hearings. We too welcome the assistance of the many groups that will be appearing before us.

The New Democratic Party is among the first to recognize that not all is well and a good deal needs to be changed. You have our acquiescence that those changes would be viewed very favourably by our party, and we would suggest these in the form of amendments.

However, in terms of the intent and the spirit, the style, the method and the approach that has been endeavoured, we certainly are very much opposed. We see it as a labour issue. We see it as a safety issue. We have the experience of what has happened in other jurisdictions, mainly in the southern United States. We see regulation as a responsibility to equalize services in areas that would not have benefited from services without regulation in the past. We see it as a responsibility. We see it as a philosophy that goes back to Confederation, where you give the less fortunate equal accessibility to a marketplace in terms of producing and moving essential services.

We are not satisfied with the substance that has been presented to us. We can appreciate the research that has been done by the minister. We can appreciate the sincerity and the dedication of his staff. However, we remain unconvinced that this is the best route to follow.

Mr. Chairman: Are there any other comments before we move on to the first presentation?

Mr. Gregory: I mentioned that I did not want to say anything. I really did not see the need. But since my colleague has reiterated his caucus position in regard to the bill, I feel I should reiterate our caucus position, which is basic support in principle for the three bills.

We do have some concerns. I believe some of the delegates we are going to hear today will express those concerns. They have more to do with the safety aspect than anything. But I would not want you to think that we are taking a position here of confrontation with the bills at all.

We see a need--I think I speak for my caucus; I believe I do--we see a need for this type of legislation, but it has to be modified to accommodate some of the interested parties we are going to be hearing from. That is our position.

Mr. McGuigan: I am only going to be here for the one day, so I just wanted to get my welcome for this act on the record. I think it is going to be of particular benefit to northern Ontario communities.

I have a fleet of one truck and have looked many times at taking fruits and vegetables, which I distribute, into northern Ontario. You have to look at the overall situation, which is that you have relatively small communities. Trying to break into the sales in these small communities, the person who is the possible retailer or buyer of my product looks at his situation and says, "Well, if I buy it from McGuigan on this particular trip when he is coming through, will he be back here next week? Since he probably will not be back here next week, I am going to continue buying from my regular wholesaler, who has established a route through various towns."

The reason I cannot go up there and give some competition to those people, who really have a captive market, is that I have to dead haul home several hundreds of miles. It simply is not economically feasible. But if it were possible, and I believe it is under this act, that I could get a load of paper, or something of that nature, to bring back to Toronto, I would have a back haul. Then an operator like myself, or anybody else in the same situation, could get into the northern market and provide some competition. It is my belief that the distribution system in the north is largely a captive situation; there is no room for a competitor to come into the market. I think you will find this will be a boon to northern Ontario.

Mr. Chairman: If there are no other comments, I suggest we move to our first presentation; it is from the Ontario Trucking Association. I believe Mr. Cope is the spokesperson. Mr. Cope, would you introduce your colleagues. Welcome to the committee.

ONTARIO TRUCKING ASSOCIATION

Mr. Cope: I would be glad to do that. Sitting to my right is John Sanderson, a vice-president for CP Trucks. Seated to my left is David Bradley, our director of economics and my executive assistant.

I believe copies of our written submission have been distributed to members of this committee. These should be before you. To facilitate our presentation, I thought I would take you through this several-page brief and just focus on the main points in it.

I would direct your attention to what we number as page 1 in our book; it starts with "Introduction."

At the outset I would like to say we are pleased to have the opportunity to appear before you. We believe Bills 150, 151 and 152 are important changes to the legislation in Ontario affecting the trucking industry. These bills have been developed in what we consider to be a totally responsible way. Both the current government and the previous government, which had been looking at the regulatory reform procedure, have given us a great deal of opportunity--when I say "we," I mean part of all the affected parties, whether they are shippers, truckers or other people who have an interest in the transportation of goods in Ontario--had a full opportunity to dialogue on the issue and present our views.

1550

I must say that a great number of the concerns we had with early drafts of the legislation have been corrected in a way that I think is beneficial to all parties concerned. But we appear before you today because there are a few remaining points that we think are important and have not been attended to in the way we would like.

As you can see in the middle of this page, whereas at one time we were opposed to economic deregulation of the trucking industry in Ontario, we have changed our position in the last year. We are prepared to support economic deregulation, but it is tied to five very important recommendations, which we will enunciate in the course of our presentation. We think they are essential or else the bill will fail in many of its important respects.

At the bottom of the page, we just highlight our basic areas of remaining concern that adherence to safety standards could be compromised under the legislative proposal unless our recommended amendments are undertaken and that easier access to Ontario intraprovincial operating authorities for out-of-province carriers will not necessarily be reciprocated by those other jurisdictions for Ontario carriers.

Turning to page 2, we point out our top priority, that being safety. We have campaigned very vigorously for the development of a national safety code. We were very pleased at the decision taken by the federal transport minister and his provincial counterparts towards the end of March to the effect that they are going to bring forward this national safety code and with it the concomitant legislation and regulations that would be required to put it into

effect, and the companion feature of a commercial vehicle operator registration system, which the Minister of Transportation and Communications has referred to.

Whilst we are pleased with the developments today and the national safety code in terms of the definition of principles and standards, to get these principles and standards into effect is going to require some legislation and regulations right across the country by all the different jurisdictions involved. As of now, we are concerned that there will not be a nationwide uniform set of standards with uniform enforcement, which was the original concept.

We are also concerned that all the standards will not be developed let alone implemented and in force by January 1, 1988, which is the target date for implementation of the new laws in Bills 150, 151 and 152. We will come back to that, because the date of implementation is for us very significant.

Turning to the bottom of the page, we point out that we cannot--and we do not believe you can--compromise on safety. We cannot allow Ontario residents to be exposed to the safety risks that would surely result from the proposed legislation if enacted prematurely.

Turning to page 3, we point out in the top paragraph what we think is the important feature of our presentation, that there is a direct relationship between economic deregulation and highway safety.

Faced with increased competitive pressures and declining profitability, some carriers and owner-operators will, in a deregulated environment, be forced to give less than adequate consideration to those factors that ensure public safety. Costs will be cut in those areas most related to safety: proper vehicle maintenance, inspection and replacement procedures, driver training and operational control. Increased pressures to violate hours of service regulations will exist in Ontario. These factors endanger the lives of motorists and truckers alike.

We do not just predict this to be true on the basis of no evidence. We have taken a very careful look at the experience both in Australia and the United States. The United States is the most recent experience and we believe that their experience illustrates the dangers.

As is pointed out at the first dot point, with deregulation we find evidence of increasing speeds and ageing of trucks. The average speeds of trucks increased sharply following deregulation from 60 miles per hour in the 1977-79 period to about 65 miles per hour in the 1983-86 period. The study also showed that the average age of equipment rose from 3.7 years in the initial period to 5.2 years in 1986.

Hours of service violations increased. The same study also showed that on average less than four per cent of truck drivers were operating in excess of 15 hours per day in the 1977-79 period. By 1983-88, the post-deregulation period, this number had jumped to eight per cent.

A recent US study conducted by the AAA Foundation for Traffic Safety determined that driver fatigue was the primary cause of over 40 per cent of heavy truck accidents, based on a sample of 255 heavy truck accident reports.

Turning to page 4 and the companion page attached thereto, we focus your attention on the experience in California. It is a series of four graphs: The

first graph plots truck accidents against years, starting in 1980 through 1985. Since 1982 the truck accident rates have been increasing. Turning to the next graph on workers' compensation rates, workers' compensation rates in trucking have really shot up substantially. The third graph looks at maintenance. Despite the increasing accident rate, the maintenance expenses have been cut back significantly. The final graph on that page depicts safety programs by companies. Industry-sponsored safety programs dropped off markedly after deregulation.

I should say that is the California experience. It would be wrong to say that we are in an exactly identical situation to California. Certainly, in Canada, both levels of government have paid greater attention to the safety requirements and they have started to put in place the national safety code, as we mentioned earlier. In California, they did not think about safety until they had got into deregulation for a few years, so I think we are one up on them, but we still have to plug some potential gaps.

Turning to page 5, we focus on the key safety issues. We think the current measures for preventing predatory or unsafe pricing practices are impractical and inadequate. There again, we point to the California experience as proving our point.

The second point is that it is not clear that freight forwarders will face safety sanctions. Here we have a question of interpretation and the reading of the act. The Ministry of Transportation and Communications people feel that they are covered. We think they may be right, but we would like it made clearer in the legislation.

The next point is a terribly important one. We think the commercial vehicle operator registration system, as fine as it is, has a major loophole that we think has to be covered up. Bill 152 does not ensure that operators, whether they be for-hire, private carrier or freight forwarder, will have their CVOR exposed when they use licensed owner-operators who hold CVORs in their own names.

This raises the possibility that some irresponsible operators could escape sanctions for poor safety practices, because it would be the owner-operator who would be held accountable. If the licensed owner-operator loses his licence, the irresponsible operator would simply replace that owner-operator, and the poor safety practice would continue. We think this is a weakness in an otherwise fine plan.

A major concern on safety is that of timing. We feel that the legislation should not be implemented before all essential safety measures are fully implemented and enforced. We will arrive at a specific recommendation on that point in a few minutes.

The one point on this question of reciprocal operating rights is not a safety issue; it is really an economic issue. We point out that there is a potential giveaway here by the province of Ontario which we think should be reciprocated. For example, the legislation that is being brought forward for third reading in Ottawa this week on Bills C-18 and C-19 will balance, for trucking purposes, the access to transborder routes that the Americans have given to Canadian carriers since 1980.

With the Ontario legislation that is before you right now, the laws would deregulate local domestic routes within Ontario, and the American carriers could have easy access to local Ontario routes, even though within

the United States there are 43 states out of the total of 50 that deny those same easy-access rights to Ontario-based carriers.

We think we really have to insist on reciprocity here. We point out that at the present time in these 43 states--and they include states like New York, Michigan, Pennsylvania and California, the ones that are terribly important to Canadian carriers--it is difficult and expensive to get intrastate route authorities. We will have a recommendation to make on a reciprocity proposal there.

1600

Our last five pages detail five recommendations that go to the thrust of these particular concerns.

Recommendation 1 deals with measures for preventing predatory or unsafe pricing practices. We set out four suggested clauses to be added to Bill 150:

"Either upon the complaint of a person, or upon its own initiative, where the Ontario Highway Transport Board receives prima facie information alleging that highway transport pricing practices are the result of operating practices that are detrimental to public safety or are predatory, the board shall make such investigation of pricing practices and operating conditions as in the opinion of the board is warranted.

"Where the Ontario Highway Transport Board is conducting an investigation pursuant to subsection (1), it may require any highway transport undertaking to furnish to it and within such period as is specified by it, any information that, in the opinion of the board, is required by it to determine if pricing practices are contributing to unsafe highway transport operations by that undertaking or any other highway transport undertaking.

"The board may hold hearings and call any witnesses as may be required to facilitate their investigation.

"If the Board finds that pricing practices in the subject market are predatory or contributing to unsafe operating practices, the board may:

"(a) order the highway transport undertakings involved to cease and desist such pricing practices;

"(b) levy fines not to exceed \$50,000 against offending highway transport undertakings; and

"(c) press charges under the Competition Act for cases of predatory pricing."

Recommendation 2 deals with the question of whether freight forwarders are covered under the act. For clarification's sake, we would like to add a line to subsection 15a(1) of Bill 152, which would add, at the tail end of that section, "An operator can be a for-hire carrier, a private carrier or a freight forwarder."

Turning to OTA recommendation 3, we pointed out earlier this major loophole for avoiding CVOR safety sanctions by the major carriers using owner-operators. We suggest that you insert new subsection 15a(7) in Bill 152, to read as follows: "Where a person holding an operating authority contracts the services of another person who is also the holder of an operating authority, the former will be deemed to be the operator."

Our recommendation 4 deals with the all-important question of timing. We recommend that section 43 of Bill 150 be amended as follows:

"(a) This act comes into force on a date to be proclaimed by the Lieutenant Governor.

"(b) The Lieutenant Governor shall not proclaim this act into effect until the Minister of Transport certifies that all commercial vehicles operating into, within and out of the province are subject to the effective monitoring and enforcement programs to ensure adherence to the national safety code and provincial safety regulations covering the vehicle, the driver and hours of service."

We are saying, fine, go ahead with deregulation, but make sure everything is ready on the safety front first.

I should point out that today I am in receipt of a letter dated June 3, 1987, signed by the Minister of Transport John Crosbie. I had written to him about the timing issue, and he has written back to say these things:

"While the proposed timetable for the implementation of the national safety code is to be phased in between 1988 and 1990...the main elements of the national safety code will likely be implemented by January 1, 1989."

My goodness, how in the heck can you bring forward economic deregulation if the main elements of the national safety code are not going to be in place until January 1, 1989? We would just repeat the experience of California all over again, and I do not think anybody wants that.

Our final recommendation deals with the question of reciprocal operating rights. We feel that this committee should go on record as recommending to the Minister of Transport the following policy procedure. The Lieutenant Governor in Council should issue a policy statement on the reciprocity requirements. Then, in accordance with section 36 of Bill 150, the Ontario Highway Transport Board would be bound to take it into account as one of the elements of a public interest in paragraph 10(1)5 of Bill 150.

That reciprocal operating right would be something that would say that the Ontario Highway Transport Board could give favourable consideration to an application by an American carrier for a domestic operating authority within Ontario, if that carrier hails from a state in the United States or another province in Canada where that same easy access is granted to Ontario carriers.

Those are the points we would like to make at the outset, and the three of us are here to answer whatever questions the committee may have.

Mr. Chairman: Thank you, Mr. Cope. I think I speak on behalf of the committee in thanking you for your brief and also for dealing so directly with the problems of deregulation in California, rather than trying to pretend they did not exist.

Are there any questions from members of the committee?

Mr. Pouliot: I too very much enjoyed your presentation and some of the food for thought as portrayed by the California experience. I have only three brief questions or comments regarding the safety aspect of your presentation.

Given the rather large percentage addition, if there is any such

terminology--in other words, many more goods are moved through trucking than in vesteryear, for instance--is it your impression that government agencies or authorities to monitor safety are barely adequate nowadays?

Mr. Cope: Yes. Certainly, it has always been our view that there is a greater need for more enforcement by the government and its agencies on the safety record. Part of the problem in the past derived from the fact that the Public Commercial Vehicles Act had some anomalies in it and was not susceptible to easy enforcement.

The new legislation will be much easier to enforce, because the provisions are clear and the Ministry of Transportation and Communications has established this CVOR system that can do the job. It is going to have records and computers, and it will be able to do the job. There again, they are going to have to apply some additional resources. I know they have been thinking about additional resources, but we feel it is highly important that if the Legislature of Ontario passes laws, these laws be enforced and obeyed.

Mr. Pouliot: Along the same lines, if I may, are you aware of any government plans to appoint more inspectors to enforce the proposed legislation from the government?

Mr. Cope: The government of Ontario has made known to us that it is going to appoint some additional inspectors and enforcement people. I have forgotten the numbers, but they were relatively modest.

Mr. Pouliot: The last news I heard, they were thinking about it. We know how long that can take.

One last question: Would you favour a safety bond being posted for people who wish to obtain a licence under the new proposed regulation, as a safeguard to make sure they would comply with the rules set forth in the legislation?

Mr. Cope: We favour writing either into the laws or into the regulations that carriers have a certain level of insurance. We think companies should have no less than \$1 million insurance, and where the transportation of dangerous goods is in hand, it should probably be of the order of \$5 million.

1610

Mr. Pouliot: So that could be taken as an actual part of your recommendations?

Mr. Cope: Yes.

Mr. Pouliot: Thank you very much.

Mr. Gregorv: I do compliment you on the clarity of your brief and its simplicity. Sometimes in committees like this we are used to many demands, some of them superfluous, and I can see in the suggestions you have made they are clear and to the point.

Just one thing: In assuming that these things will happen in the event of deregulation--and we are going, of course, according to the experience in California--can you really draw similarities between the way the transportation system operates in California, or in the United States, and what happens here in Canada?

I am using specifically the information or what we have seen recently about the larger trucking organizations taking over from any kind of competition, thereby virtually eliminating competition and doing what they want. Can you really compare the two operations at the present time?

Mr. Cope: I think it is quite clear that in a deregulated world, especially in the less-than-truckload field, where traffic density is high and traffic loads on each traffic lane become terribly important to getting your unit cost down, you have some degree of concentration. Certainly, the experience in Australia and the United States has confirmed that under deregulation you get fewer and fewer very big carriers in the area of less-than-truckload.

Now, in the area of truckload freight, the early experience in the United States has been that there has been some expansion in the number of operators in the truckload freight field, and it is going to be interesting to see whether that phenomenon continues over a long period of time. But I think you can draw certain comparisons between Canada and California. Mind you, as I said in the course of my presentation, there were some things that were a little different in California than Canada.

California plunged ahead with deregulation without thinking too much about safety. In Canada, both at the federal and the provincial levels, governments have thought a bit more about safety. They have not got all their plans up to the standards we would like, but they have thought about it and they are thinking about it in conjunction with deregulation.

Mr. Gregory: Mr. Pouliot touched on the subject of enforcement. In terms of numbers, I do not expect you to know the numbers--perhaps even the minister himself would not know the numbers of inspectors on Ontario roads at the present time--but could you speculate for me or attempt to, in what terms of percentages would we need to enforce or increase the hiring of inspectors to do what we want to do?

Mr. Cope: I guess I have two different answers to that, one in terms of the addition to resources. My own judgement would be to run to an increase of the order of 100 per cent. I would double the resources applied. But it is not just a question of resources. The people out there have to want to enforce and be able to enforce the law. Even today where there are inspectors, they have closed their eyes, in our judgement, to a lot of infractions that we think they should have been clamping down on. We think that adding resources and then getting them accustomed to the fact that these are the laws and the laws have to be obeyed and enforced is important.

Mr. Gregory: Does this also mean increased capital expenditure in terms of truck stops, truck-inspecting stations on different highways? Are we now going to have to have these inspection stations on virtually every highway?

Mr. Cope: I cannot give a quick answer to that, Mr. Gregory. One of the concerns we had is in regard to the truck stops that do exist around the province, how many times you will drive by them and find them closed. We hope that perhaps it might be possible to keep them in operation more than they are now, and there may be some roads and highways that are lacking in inspection stops that could require some capital. I have not particularly investigated that.

Mr. Sanderson: If I could perhaps add to that, I think it is the intention of the national safety code to deal with a lot of the enforcement

matters. What we suggest is that we are moving from a period where intraprovincial, extraprovincial and transborder truckers are under fairly rigid regulatory control--if they have a lot of safety violations, they will lose their licences. That is not to say that will not happen in future, but with the ease of getting a licence, we are anticipating more operators and existing operators operating in a much wider area.

Also, coupled with intraprovincial deregulation, we have concurrent transborder deregulation, where American-based carriers will be able to operate extensively in the province. We suspect that they will; that is why they favour deregulation of Canada.

There is a cost. The federal government is putting up something in the order of \$20 million to assist provinces in putting in enforcement and new codes, and it is not just inspection stations. It is inspection of maintenance records. It is examination of hours of service in carrier facilities. It is looking over detailed maintenance records and inspecting vehicles on the road and in carriers' premises. It is a gigantic program that consists of about 18 major elements, and it is planned to be implemented by 1990, effectively.

It is a big program and it recognizes the fact that we are deregulating. We are making a significant change. It is not to say that the present enforcement and safety programs that are in place are not adequate. I think they probably are reasonably adequate for the state of regulation that we have now, but we have to recognize that there is a change coming and it is a significant one.

Mr. Gregory: They might be adequate in terms of inspection of equipment. Do you feel they are adequate in terms of driving habits of the truck drivers themselves?

Mr. Sanderson: That is a problem. We are not sure about hours of service, but we in the Ontario Trucking Association have a number of internal programs in which we report on and attempt to improve driver habits. It is a big part of our operation. Safety is extremely important to the trucking industry. It influences all areas of our cost. It influences the safety of our customers and the public. It is an extremely important area, so it is one we have been concentrating on as well.

Mr. McGuigan: I just want to report to our witnesses and to members that about 10 days ago, as a guest of the minister, I attended the opening of a new truck inspection station on Highway 401, approximately 20 miles from Windsor.

I guessed correctly. I said to one of the people there, "It looks like about \$2 million." I think it was just over \$2 million that went into that new station. Guessing again, I would say it covers about five acres and has an extensive area for handling a number of trucks while they are being inspected by the safety people.

They also showed us portable scales they have there. You are no doubt aware that the old portable scales required Man Mountain Dean to get them out of the trunk of the car and put them down on the road. I think these weigh a little under 40 pounds and appear to be very ruggedly built. I think they are made of some special light-weight metal, probably magnesium. They have digital computers in them to tell you what the weight is and so on. These things are available to try to catch people who might try to go around a station and so on. Anyway, it looked to me like a really excellent depot and place to carry out these examinations.

I want to speak specifically about the predatory pricing. I am a little puzzled because, generally, when you think of predatory pricing--and the very word "predatory" has been interpreted that an operator, whether it is trucking or whatever industry, prices his goods and services below the normal price in the hope that, over time, he would cause his competitor to go bankrupt and would therefore eliminate that competitor.

Here you have linked it with safety. I cannot see why anybody who was doing predatory pricing would specifically do that to save money on his safety regulations. There could be any number of ways by which they could save money. They could pay less wages, employ nonunion people, and break other sorts of regulations, such as interstate regulations. Why would you put predatory pricing simply as an offset of safety?

1620

Mr. Cope: There are two parts to our pricing proposal. We refer to predatory pricing and we refer to unsafe pricing. We see a distinction there. Predatory pricing occurs when a company or a few companies set prices that are so low that they have the effect of making it very difficult for weaker, financially-operated companies to survive.

Mr. McGuigan: That is my understanding.

Mr. Cope: The only way these companies can try to make ends meet is by forgoing maintenance and driving for long hours, that kind of thing. We see the predatory pricing action by the big carrier having unsafe pricing repercussions on the smaller carrier.

Following is an example of how this happens. You may already be aware of the Lif Schultz Fast Freight case that is now going on in the United States. This company is asking for \$334 million plus treble damages in the predatory pricing case against the three big trucking companies in the United States, Consolidated Freightways, Roadway Express and Yellow Freight. It claims that those three carriers, since the onset of deregulation in 1980, have engaged in a widespread program of predatory pricing, selling transportation services below their out-of-pocket costs, with the intention of driving their competitors out of business. I do not know what the disposition of that case will be, but it provides one example of an operator who alleges that others are engaged in that practice.

Certainly, as you turn to the experience in California, where prices got pretty dog-eared, a lot of companies went out of business. You may say, perhaps, that they were not efficient enough to stay in business. Even so, a lot of companies went out of business.

We should also look at Australia. In Australia, we can look at over 30 years of deregulation experience, because they deregulated in 1953. A great number of companies have gone out of business since then. Back in the early days of 1950, the market concentration was such that four companies had five per cent of the market. Today, three companies have 75 per cent of the market. You see the same thing happening in the United States with the three carriers I just mentioned a few minutes ago. They are starting to pull away in terms of percentage share of the market down there. That is a phenomenon. I do not say it is all bad, but it is certainly going to be the case here in Ontario. Some companies will get very big and there will be a tight little oligopoly of three or four carriers in the less than truckload market and the smaller carriers will have to look to truckload operations and specialty services to survive.

Mr. Pouliot: Called a cartel.

Mr. Chairman: Mr. Pouliot, keep Karl Marx out of this.

Mr. Wildman: We are concerned about Adam Smith.

Mr. McGuigan: I think I have my answer but I do not see a convincing case that predatory pricing is the direct link to unsafe pricing, as you explain. Predatory pricing is introduced largely to get rid of the competition.

Mr. Cope: You get a marketplace with the big companies. Supposing the normal rate for any item is one dollar. Supposing some big companies decide there are too many small companies out there in the market. They cut that price to 35 cents. For these smaller companies to hold any share of the business, they have to cut their price to 35 cents. Their costs may be 90 cents, but they have to cut their price to 35 cents. They can only hold that in place for so long until they have used up all their reserves and they go bankrupt. In advance of that, they cut their safety practices. It is a clear-cut economic phenomenon. The experience in the United States and Australia says it is not just theory. It happens.

Mr. McGuigan: That may well be true, but company A, operating under normal circumstances, can decide: "I am going to cut three per cent off my safety budget. We are going to spend three per cent less money on safety." It is not related to predatory pricing. It is just a decision they made. It seems to me that at such stations as the one I described on Highway 401 and others that no doubt will be expanded, an increased number of enforcers--these people are going to catch the people who have made the arbitrary decision to save three per cent or five per cent on their safety. They are also going to catch the predatory fellow.

Mr. Cope: We certainly hope they do, but we are kind of coming at this problem from two sides. We say beef up the safety net and then have a residual power in the Ontario Highway Transport Board. If they see some crazy pricing practices going on the market, they can step in. You have to have some ability to react. You do not want to suddenly have to bring the new legislation back in before the Legislature to say: "That law we passed last year or a year before that did not go far enough. We had a lot of bad experience in Ontario and lives have been unnecessarily lost. Let us do it now." We say do it upfront. Just give the Ontario Highway Transport Board residual powers to step in there and eliminate bad practices when they develop.

Mr. McGuigan: Just one last question, Mr. Chairman. Is what you are describing not more in the federal realm than it is in the provincial realm; that is, competition law is largely a federal matter?

Mr. Cope: Competition laws are largely federal, but it has been the case that provincial governments can establish rate regulations and rate controls. They have existed in Ontario and other provinces in days gone by. In our view, it is a full right and responsibility of the province of Ontario and the government of Ontario to establish within their laws this safety measure.

Mr. Chairman: Mr. Offer had a short supplementary.

Mr. Offer: A question with respect to the service provided to the trucking industry. In the California experience--and I am wondering from that experience with respect to what they have gone through--how has that affected the smaller communities? Is there any evidence that service to the smaller

communities has been detrimentally affected through the California experience?

Mr. Bradley: I think I have no specific information, but in California, just because of the population of it, it is a very different jurisdiction. You do not have the distances between large communities and small communities. I do not think you can necessarily draw the same relationship that you are implying here.

Mr. Offer: The reason I asked the question was because much of what you were saying related in so many ways to what was going on in California. You talk about predatory pricing. To carry it to its logical conclusion, it would seem that if what you are saying were in fact the case--and I do not mean this in any critical way--but if it were in fact the case then on the basis of predatory pricing, there ought to be a very sharp decline in service to smaller communities, notwithstanding the population of California.

Mr. Cope: I do not know that one leads to the other. If you have predatory pricing, take three big carriers who may drive everybody else out of the market, that does not necessarily mean those small communities are without services. There may be some interest on the part of those three big carriers for servicing those communities. Where the problem arises is if the survivors have no interest in serving a community. They say, "There is no use serving the Sault Ste. Marie area because there is not enough money to be made up in there." That could be a problem.

Certainly I think the airline deregulation experienced in the United States shows that a lot of the bigger carriers abandoned literally hundreds of smaller towns. Now filling in behind those carriers, a lot of commuter-type services have developed. Some people like them and some people do not, but I do not know that I have any specific information on California that shows there is a loss of service to these small communities because of predatory pricing.

1630

Mr. Bradley: Moreover, in California they never reached a floor price in pricing. There was always someone willing to come into the market, it does not matter how low the price was, to service. It is a question of they may have service, but whether that person is a safe operator is an entirely different issue.

Mr. Offer: What I am hearing is sometimes you are talking about predatory pricing whereby we are talking about a larger company buying out a smaller company and eating up the smaller companies. With respect, I see that one then goes into the experience of the smaller companies to maintain their existence by cutting back on safety factors. I must say that while I appreciate the brief, that is the one concern I have. There seems to be this constant merging going back and forth with respect to predatory pricing and safety factors.

Do you have any examples with respect to the Australia experience of loss of service to communities?

Mr. Cope: I have not specifically researched that, but I would imagine, given the geography of Australia, there would have been some degradation of service to smaller places.

Mr. Offer: I was just concerned if you had any data.

Mr. Cope: No.

Mr. Wildman: I want to make clear at the outset that my concern with this legislation and with your comments is not just related to one factor but to a number. Obviously, as a representative of northern Ontario, I am concerned about service, the cost of service and the question of whether concentration in the marketplace will properly serve more remote areas and smaller communities and also whether the cost will be prohibitive.

I am also concerned particularly with regard to safety on our highways because, as you know, in the north we do not have as good roads generally.

Interjection: If any.

Mr. Wildman: We do not have as many roads and we have long distances to cover. Having said that, I want to put on the record portions of a letter that I received from Denis Gratton Transport of Chelmsford. I am sure you are familiar with it.

Mr. Chairman: We are certainly familiar with the township.

Mr. Wildman: I would like Mr. Cope, if he could, to respond to the concerns raised in this letter. Obviously, this is a small transport company and I will just read portions of what he has to say.

"The Truck Transportation Act will replace our PCVs. This plan would be a disaster for the north. Our competition level is competitive enough and most companies with PCV licences for northern and southern Ontario are far from working at their capacity.

"We are a company with five units operating daily but yet employ 10 people. If a law such as this must come into effect, people trying to establish themselves in this industry would start with severe rate cuts, which in the north we could not afford.

I am concerned that with the amount of transport companies in the north and a free-for-all for anyone who would buy a truck would cause such a disaster that a small business my size would not exist for one year....

"We are in direct competition with every major transport company there is in northern Ontario and have respect for each of them....but yet still our competition is very stiff. Many times we run under a 10 per cent profit margin, can we afford to run under a four per cent or five per cent profit? You could save money for six per cent in the bank. Why is it that the people in the north always are singled out to be guinea pigs for what people like Ed Fulton anticipate as good results in northern Ontario?"

Mr. Ramsay: Did you write that, Floyd?

Mr. Chairman: Do not look at me.

Mr. Wildman: I am just reading what this gentleman wrote to me.

"In the United States' experience, the deregulation (or loose licence law)" that is how he refers to it, "has cost companies with 50 trucks or less to fold or to sell to firms with thousands of units on the road, thus leaving two or three major companies and independents who live seven days a week in

their trucks just to survive...In the transportation business we need this protection of PCVs to maintain a successful business, to employ the right amount of employees to do the job correctly and safely.

"One more point that the minister said that caught my attention was that anyone new to the business of transportation could not establish himself in this industry because of this over PCV protection. In the last year I have managed to secure some of the best licences for this area and I'm a small fleet operator. It's still the same old story, if you're an entrepreneur with a good head for business you can still establish yourself with PCV licences."

Mr. Chairman: Thank you for reading that letter from a very astute constituent of mine, Mr. Wildman.

Mr. Wildman: I think Mr. Gratton raises a number of concerns that I am sure are of particular concern to you, Mr. Chairman, and to other northern members. It was stated by the Minister of Transportation and Communications (Mr. Fulton) at the outset that he thought this would be of particular benefit in the north. Obviously Mr. Gratton, who is in the business, does not agree with that. He is basically saying that he can compete now in a stiff, competitive market--sometimes with a low profit margin but he can compete--but he does not believe he can compete if he does not have the protection of the current PCV legislation. As a representative of the trucking association, do you think the description given by this particular operator is a likely scenario?

Mr. Cope: First, we can well understand the point of view expressed fairly articulately by Mr. Gratton in that letter. Certainly, a lot of members of the Ontario Trucking Association have the same perceptions and fears. Until last year, we were taking a pretty strong stance against economic deregulation because of that, but we felt that perhaps we should focus on some of the features that would mitigate against what we call unbridled competition. We expect and we think the majority in the trucking industry is prepared for an increase in competition. What they are concerned about is unbridled, unsafe competition that comes because you get a lot of untrained, irresponsible people in the transportation market or you get some predators in the market who can cause competition that a company like Mr. Gratton's operation would be hard put to keep up with.

We focused our attention on two things: The first is to make sure there is a proper safety net in place that will protect Mr. Gratton and companies like his against what you might call irresponsible, unscrupulous operators who would not have any intention of maintaining their equipment or abiding by any hours-of-service regulations. The other feature is to have some residual powers in the Ontario Highway Transport Board to jump in if the pricing gets ridiculous.

If the normal going rate is \$1 and you find a company is pricing at 35 cents and Mr. Gratton is not able to hang in there, we think that is wrong and that he should be protected against that.

The one thing that we think might be to Mr. Gratton's advantage is the fact that the new legislation has with it this enforcement system, the commercial vehicle operators registration system, which we think is a major step forward. One of the problems with the Public Commercial Vehicle Act is that it has not been or could not be enforced. There might be differences of view as to whether the will was not there or whether the resources were not there, but the PCV act has not been enforced. It has had its downside in being

a protective set of regulations for small operators.

We think the new laws, especially with the CVOR system, mean that you are going to get fewer laws and regulations, but they are going to be clear and they are going to be enforced. We think that could be to his advantage. We think that if you add these safeguards we are suggesting, you are going to get a more competitive world but you are going to guard against the wild kind of world that has been experienced in other jurisdictions.

1640

Mr. Wildman: Obviously, Mr. Gratton sets out two possible results as he sees them. One is concentration, which you have talked about, which in his particular case may mean that he goes out of business. I am not raising this because I am concerned just about his future. I am concerned about what this means for business generally in northern Ontario. He says there will be a few major companies on the road, and that is the concentration part of it, but he also says there will be a few independents or a number of independents who he says will live seven days a week in their trucks just to survive.

Mr. Cope: This is why the ministry has to have a proper safety net, so you do not have these people living seven days a week in their trucks. You are going to have to have log books and hours of service and inspection stations to guard against people driving long hours and that type of thing. It is true that deregulation is going to favour the bigger company, whether it is a bigger trucking company or a bigger shipper. The bigger shippers are going to be able to wrestle better prices out of the trucking companies than the small shippers, so small companies will suffer. You can ask, "Is that good or is that bad?" That is a big public policy question but it is a fact that the bigger companies are the ones that are going to benefit most.

Mr. Wildman: I understand what you are saying. You are saying that the way to try to deal with this guy who is driving long hours, who may not be taking the rest stops he needs and who is probably not maintaining his truck in the way he should be because he does not have the money or the time is to have the enforcement to ensure that he cannot operate in that way, but basically what you are saying then is that he cannot operate.

Mr. Cope: I do not know what you mean by he cannot operate.

Mr. Wildman: If the only way he can survive in the business is to drive longer hours than he should and perhaps cut on his maintenance and not carry out the kind of safety programs he should, if he is prevented from operating in that fashion, in effect what you are saying is that he is prevented from operating, and perhaps he should be for safety reasons.

Mr. Cope: This is one reason we think some consideration has to be given to some kind of monitoring of a floor price, because that is what is going to be the difficult thing for the small operator. If he gets involved in pricing wars that somebody else is running and if he has little ability to withstand them, that is where you need some kind of protection. But if you have an agency such as the Ontario Highway Transport Board or whatever that has some responsibility for jumping in when prices get ridiculous, then it is some degree of protection against this unmitigated competition.

Mr. Wildman: What you are saying is that if you have rate regulation, you would prevent what you have referred to as predatory pricing. Then an owner-operator, for instance, would not necessarily have to operate in this unsafe way.

Mr. Cope: Let us just talk a little bit about regulation. We are not advocating rate regulation.

Mr. Wildman: That is what I am interested in trying to get at.

Mr. Cope: We are advocating that when something gets out of hand, some agency of government should have a chance to jump in and put things right. We do not want day-to-day filing of rates. It is not proposed in the legislation. We do not want a bureaucracy with computers assessing all the rates on a day-to-day basis, but you have to have some protection against competition that would just drive the Grattons to the wall.

Mr. Wildman: Earlier you used the example of a dollar as the rate and somebody comes in to try to force others out of the market by charging 35 cents. To meet that, the smaller independent might try to meet the 35 cents. You are saying then the board might come in and look at that and determine whether the company is charging much less than its own costs just as an attempt to force smaller operators out of the market. Let us say the board or whoever determines that and says, "A fairer rate in this case would be 85 cents." Then what? Do they then set the rate at 85 cents?

Mr. Cope: I guess they would pressure a company into establishing a rate that was acceptable. They would say, "Stop setting your price at 35 cents," and they would have some notion of what would be acceptable. They would not set the rate but they would allow rates that made some greater degree of sense to continue.

For example, if in the case we are talking about, the costs for companies range between 80 and 90 cents and the rate is \$1, so you know the efficient companies are running at the 80-cent cost level and the inefficient are up at 90 cents, the difference between that and \$1 is what they make on profit. If that particular price comes well below 80 cents, it means that even the efficient operators are not recovering their own out-of-pocket costs. If continued for many days or weeks, that can be a kind of predatory pricing action. If a person does it one day and stops the next day, that is another thing. What we are concerned about is continued pricing that is below their cost level that seems to have no other aim than driving people out of the market.

Mr. Wildman: I understand what you are saying, but I am a little confused as to how you resolve it from your point of view. You are saying the Ontario Highway Transport Board would not set the rate, but it should indicate that this is an unfair pricing practice. What if the carrier says, "Thank you very much for the information"? Do you say, "Too bad"?

Mr. Cope: If the board has the power to disallow or to cause them to cease and desist on an unacceptable pricing action, I guess the board can make its own regulations. One of the things they might do is set a zone of reasonableness. They might say, "In this particular case, we would think that prices anywhere in a range of 70 cents to \$1 might be reasonable or acceptable." That is some indication to a carrier where he is going to run into trouble.

Mr. Wildman: Okay. You are talking about a negative regulation rather than a positive one.

May I just ask two more questions? One deals with the question of back-hauls. This has been raised a number of times as one of the reasons for

deregulation, particularly in northern Ontario. There is the argument that it does not make sense--frankly, I agree that in many cases it does not make sense--to have a truck running loaded in one direction and then having to go back empty, when it could perhaps be taking another product back and thus be far more economic and make business more competitive in northern Ontario. Is it your view that this problem of back-hauling could be resolved without deregulation?

Mr. Cope: Let me just talk a little bit about what we have observed in the United States. Where they have deregulated, it has of course suddenly given people the opportunity to take back-hauls where they had only fore-hauls, but they also have the additional phenomenon of more people in the market for the same amount of freight.

Mr. Wildman: Yes.

Mr. Cope: In the United States, the result is that the average load per truck has gone down with deregulation. The efficiency of the American trucking system in that respect, in terms of pounds hauled per vehicle, has gone down. The cost per unit of commodity has gone up so you can say that is a kind of negative result of deregulation. Maybe over time they will find a new equilibrium point where people get used to what they should do in their back-hauls and fore-hauls. I think that problem of not finding a load back is a factor in some cases, but it has been exaggerated by the performance of deregulation. They have seen that it could solve all their problems. It may solve some problems on some routes but it can create other problems on other routes.

Mr. Wildman: I see. The other question I wanted to raise was the one you mentioned about reciprocity. Obviously, where I come from, when I look out the back window of my home I can see Michigan, so a lot of the truckers in my area are hauling into Michigan and the midwestern United States. If we are now going to allow American companies--a number of the American companies, as a matter of fact, have applied for public commercial vehicles to operate in Ontario--if we allow free access of American trucking companies into the Ontario market, what progress or possibility do you see of getting a similar free access into the Michigan market and into the midwest? In other words, our haulers could haul on Highway I-75 down to Florida and into the southern United States.

1650

Mr. Cope: I guess there are a couple of different things that are ongoing here. We know this question of lack of reciprocity is being examined within the context of the free trade discussions between the United States and Canada. They are looking at the problem to see if there is some type of solution, but of course you have the same problem in the United States that you have in Canada.

If the chief trade negotiator for the United States, Mr. Murphy, felt it would be a hell of a good deal if he could trade off some states' rights for provincial rights in Canada he might be tempted to do so, but he does not have the clearance of all the 50 states, the governors and their legislatures, that may want to deal on that. I am not sure whether they are going to get the grand solution that easily, but they are looking at it.

We are saying: "All right. Until the grand solution comes along, we think the government of Ontario can say it is going to open up its doors to

easy access to those carriers coming from those states in the United States that give Ontario carriers the same opportunities there." For example, if a Michigan carrier wanted to get some local domestic operating rights in Canada, we would say okay for that, if Ontario carriers could get the same kind of rights within Michigan. Such is not the case today. As a matter of fact, one of the big concerns of a number of Canadian carriers is the problem of operating authorities within the state of Michigan.

Mr. Pouliot: I am quite taken by your presentation. If I heard you correctly before, and maybe you can help me, if the marketplace fails to serve the public interest, then you would perhaps not be opposed to a system--let us call it a system of regulation--to make sure that the public interest is well served. If my memory serves me correctly, it was public outcry that forced the government to introduce regulation. That is the reason we have regulation in our country.

While I have been taken by your presentation, I am concerned about the 800 member companies you represent. Records will attest that since around 1980, more than 350 mid-sized companies have gone out of business and many more have been gobbled up. Given the fact that takeovers and mergers seem to be the order of the day, are you not somewhat concerned on behalf of your membership that the same endeavours will be evidenced in Canada and that the very philosophy these bills wish to serve, which is the marketplace--are you not concerned that if you have, it seems to me and I do not want to sound simplistic, far less, you create cartels and monopolies? When all is said and done, you have fewer players in the game.

Mr. Cope: For a number of years we have been exploring this regulatory reform legislation with a great deal of attention. We had been apprehensive as to the consequences of deregulation on not only the communities of Ontario but also the trucking industry. However, we had then again recognized the fact that there seemed to be a strong wave in favour of deregulation within Ontario and within Canada. It was looking at deregulating not only the transportation industry but also banks and lots of other things.

We felt the trucking industry had always been a very competitive one. Our guys, and there are a lot of them sitting back here, know how it is to compete. They compete every day and they are used to competition. We said, "The trucking industry can adjust to an even greater wave of competition, provided there are some boundary layers that protect against total nonsense on pricing or total nonsense in terms of nonadherence to certain safety requirements." We felt that if you had responsible operators in the marketplace, those who are abiding by all the safety regulations and who are pricing competitively but not stupidly, then at least you would have a fair, competitive market. This is where we focused our attention and said, "Let us get that kind of market and then people will at least have an opportunity to survive."

Mr. Pouliot: I have one last question or comment, if I may. I represent the largest riding in Ontario, roughly 28 to 29 per cent of the overall land mass. Suffice it to say there are 41 different postal codes.

Mr. Chairman: That is big.

Mr. Pouliot: It is the size of West Germany. It is indeed, Mr. Chairman. What we are really concerned with is not so much that we will be serviced by the trucking industry, but we do not want to be left in the position--and we are somewhat aware of the way the game is played when the

major players make their bid for the larger part of the market; it is a normal reaction if you are the least bit mercantile--what we are concerned with is that we do not want to be left with a system whereby we get service at whatever the market will bear; that in order to compete in the larger centres, we become the scapegoat and have to subsidize the giants because we are in the outlying area and we have to carry the guilt for the others.

Mr. Cope: I do not know how to respond to that. It is a fact that, as you deregulate, you take away some of the old features of protection against pricing discrimination, undue preference and trying to equalize everything in the market by government law or regulation. The marketplace does take over, but presumably that is what you legislators have to reconcile, as to what the public interest is in Ontario today. We have been trying to suggest to you certain features we think are minimally needed adjustments to the legislation to have a competitive market but one that is relatively fair.

Mr. Chairman: Mr. Gordon, perhaps you could wrap this up for us.

Mr. Gordon: I would be delighted to wrap it up for you.

I represent a northern riding, and I have had a great deal of representation from the Greater Northern Ontario Trucking Association. They represent, by and large, dump truck owners and operators.

When I read over the material they have been sending me and some of the representations they have made to me, I cannot help but believe that they have a legitimate concern. I would like to run the concern by you and ask whether you concur that their fears have some grounds or whether you believe it is not something that needs to be given a lot of weight.

They point out in a letter to me--and it is a lengthy one; I am not going to read the whole letter, but just parts of it--that the focus of Bill 150, as far as they are concerned, is on the highway hauler. They are worried that the northern Ontario truckers, especially those with the class R public commercial vehicle licence, which is a seasonal business, are going to be left with a diminished return on their investment and are also going to be set up for some competition that is not going to be good for the north. I would like to read you a few comments from their letters.

They say: "When the minister and his deputy, Tom Smith, appeared in Sudbury to promote this legislation, they seemed unsure and uninformed when our members asked questions concerning the dump truck part of the industry. It has become obvious to us that the government has lumped us in with the highway haulers, ignoring or not even realizing the basic differences between the two parts of the industry.

"Northern Ontario truckers work a seven- or eight-month season, while southern operators can work two, three or four months longer. We both have the same yearly overhead costs basically, so it stands to reason a southern operator can work for less money per day and, by working more days, can make the same yearly profit as a northern trucker. We are concerned that as new legislation is implemented, the current safeguards may be circumvented."

What they see is that more and more southern truckers would come up at certain times of the year and take jobs away from northern dump truckers.

They also make the point here: "During our peak summer season, trucks from southern Ontario could come up here, work for less than local truckers, then return home to supplement their losses with two or three months' additional work. Since this end-of-season work does not require as many trucks, the chances an outside northern truck would be hired are not very good, not to mention the added expenses incurred when working down south. Bill 150, while aiming at fair competition, fails to acknowledge that not all dump truck operators are on an equal footing. The northern trucker is at a distinct disadvantage."

They go on to talk about the costs of a new truck and so forth. They also talk about the fact that, "Removal of the MTC rate could see our summer road jobs being performed by southern Ontario truckers who will work for less, taking their profits home with them and contributing little to the local economy."

They go on to say, and I think this is a very important point: "Northern communities could find themselves with fleets of southern trucks to service them when times are busy and without enough trucks for snow removal or small jobs. The cost of investing in a new or used truck is simply not justified by a few weeks' work. For every outside truck that is hired, there is an economic loss to the community, one that none of us can afford."

They go on to say, and I will just read these last sentences: "If under the new legislation we are to be treated the same as the big highway freight haulers, the dump truck industry will adapt, but at what cost? As in the case of railway branch lines"--and I think this is what Mr. Offer was referring to or attempting to get information about--"unprofitable areas will go underserved while the bulk of business is based in the most lucrative markets."

Gentlemen, I think you can see there are some very grave concerns being expressed by northern dump truck operators. How much validity do you see in that?

Mr. Cope: The particular market that these operators are into in dump truck services is a very delicate one. You are going to hear that the next group making a presentation here will speak with great knowledge on the dump truck area.

It has always been necessary under the current legislation for the Ontario Highway Transport Board to approach that type of trucking business in a special way because of the special types of circumstances you mention.

Under the new legislation, it remains to be seen whether the public interest test that is described in there will find its application in terms of providing some kind of moderating control over the type of migration of trucking service that you mention.

Certainly, it is a very sensitive area to those who are operating in it. It is an area where it is very difficult to get income commensurate with the costs of maintaining the equipment and that kind of thing. I am very sensitive to their particular concern, but I think the next group that is going to appear before you will have some specific ideas as to what should be done about it.

Mr. Gordon: In reply, I think it is rather alarming to hear what these dump trucks operators have to say. It is alarming for the community

because we need their services. I think there is validity to what they are saying about finding that other trucking people come in and scoop up some of the gravy during certain months and leave the community in the lurch for the rest of the year.

I was also interested in what you had to say. My understanding is that for a period of time your association was not exactly enamoured of these bills and you were actually fighting them fairly vigorously. Then, about a year ago, as you related, you changed the tack of where you were going. The only real reason I heard was that you felt it would create clearer laws. I do not understand that.

Mr. Cope: There were a couple of things happening there. As government, its servants and we ourselves looked at the different drafts of the bill over the years, the proposals became sharper. Let me give you one example. The fitness test is an important element of the new truck legislation. The fitness test at one time was kind of a vague notion and we did not know what the heck this fitness test was going to be. A person had to get a fitness test before he could get operating authority. This has been clarified and the MTC people have started to flesh it out, so we suddenly see a fitness test that looks like a fitness test. It is a proper screening. A person does not get proclaimed fit just for the asking. He has to be able to prove he meets the different requirements in that area.

As we saw the government starting to articulate and define a fitness test and a public interest test, which would be the residual economic barriers that had to be surmounted, they started to look like they had some shape, form and substance, so we thought, all right, maybe those hurdles have some meaning; if we can supplement them with safeguards against companies breaking all the safety laws, screening out the irresponsible operators and then containing pricing exuberance, maybe that package, because it could be and would be enforced, might have some merit in the overall.

Our members concluded that this new package starts to look like it might do something the existing package does not. The existing package, the Public Commercial Vehicles Act, has on the surface some fairly stringent regulations and provides the opportunity to screen out a lot of applicants from getting the operating authority, but then so many of them go and operate illegally on the roads all over the province. Today you have Canadian truckers and American truckers operating without paying any regard to the rules, and our members are saying, "My God, you have potentially strong rules, but not being enforced; maybe it is better to bite off a lesser set of rules with the understanding those new rules are going to be enforced." That was the kind of tradeoff we had to make.

Mr. Chairman: Thank you, Mr. Gordon.

Mr. Cope, Mr. Henderson and Mr. Bradley, thank you very much for appearing before the committee and presenting your brief to us.

Mr. Cope: We appreciate the opportunity.

Mr. Chairman: We will take a five-minute recess for delicate reasons and resume immediately in five minutes.

The committee recessed at 5:06 p.m.

Mr. Chairman: The next group before the committee is the Greater Ottawa Truckers Association, which is part of a larger group as I understand it. Mr. Sauvé, Mr. Davis and Mr. Jones, I do not know who is who, so if you would introduce yourselves and proceed, we would be pleased.

ONTARIO DUMP TRUCK OWNERS ASSOCIATION

Mr. Sauvé: My name is Sauvé, and I am executive director of the Ontario Dump Truck Owners Association and the Greater Ottawa Truckers Association. Sitting on my immediate right is Neil Jones, business manager for the Nipissing and East Parry Sound Truckers Association out of North Bay. Jacques Davis is next. He is business manager for the Greater Northern Ontario Trucking Association out of Sudbury. Last, but certainly not least, is Allan Carmichael, a director of the Greater Ottawa Truckers Association.

Mr. Chairman: The committee has copies of your brief. For those of you who have not found it, it is 3/01/003.

Mr. Sauvé: If I may speak for a moment as to what is not in the brief and why, we did not make any reference to safety items per se, leaving that to a more experienced and knowledgeable group that spoke ahead of us. However, we have the odd concern which we will point out.

We represent the dump truck industry in Ontario. There are almost 5,000 licensed operators in Ontario representing approximately 11,500 vehicles. We feel Bill 150 makes it easier to get an operating authority and as such, we are not against it for Ontarians. However, it does open the door wider than it has been or is for dump truckers from out of the province, particularly Quebec, to come into the province and compete with Ontario trucks, even though we have not full reciprocity with that province.

The equivalent licence in Quebec for dump trucks has been frozen since 1977, and any new truckers in Quebec look to Ontario for work and operating authority. A fair amount of this goes on. The statistics from the ministry we feel do not truly reflect the statistics for Quebec truckers working in Ontario with an Ontario public commercial vehicle authority. They show 12 at the moment for 22 vehicles, all in the Ottawa area. However, there are many more who use an Ontario address to get their licences. This applies all along the whole border.

I guess there is nothing wrong with that except that they do come in and compete with us very severely in prices, predatory prices that were discussed here earlier. We feel this is not fair to Ontarians, and dump truckers particularly. We cannot go over there to work. We can get a permit to go into or out of the province, but we cannot work within it. We feel Bill 150 is making it even easier for the dump truckers from out of province and elsewhere to come in and get a licence.

We refer the committee to the ministerial inquiry into the dump truck industry in 1975. It really went into the question in some depth and made recommendations along the line we are suggesting to you again today; that is, if there is not full reciprocity or equal treatment, that should not be allowed or accepted by the Ontario Highway Transport Board. We appeared before the select committee in 1976 and made our concerns known at that time about this very same problem, and we had some hope for things happening, but nothing has changed. We have had promises for a dozen years and here we are getting them again. We know they are supposedly reformed, if you will; reregulation is going on in most provinces.

We went to great effort to find out what is going on in the Quebec dump truck industry. We went right to the people who should be knowledgeable, that is, the heads of the Trucking Association of Quebec and the Quebec dump truck operators, and they tell me there is nothing going on in the way of reform legislation. That is why we feel very strongly about Ontario opening the door even wider. All we are really seeking is that there should be full reciprocity, and I do think that is asking too much.

1720

Until there is such an implementation or agreement, we feel that the class R group of the dump truck industry should be left under the Ontario Highway Transport Board hearings through public necessity and convenience. Over the last 10 years, that board has developed a degree of expertise in being able to assess the needs of the various regions and issue the licences it feels are required. There has been that degree of stability through the board operating this way.

If section 2 of the bill is to be meaningful about keeping a viable trucking industry, then we feel there should be special arrangements where the dump truck industry must be considered because of the very large numbers involved. In suggesting that the class R group be kept before the board for public necessity and convenience, it is our understanding that the bus people are going to be kept before the board under the public necessity and convenience requirement.

We do not feel that there is much promise for us under the public interest aspect of the bill, in that the public interest would apply to an individual application. In this industry, the licences are granted by ones and twos and so on, till the numbers get out of hand.

There is some concern in that Bill 150 does not tell of any means to deal with a situation when you reach overcapacity. I would ask the committee to bear in mind that the dump truck people are not necessarily a more articulate group, but they are very strongly individualistic and not highly educated, if you will. That is not to say that against them. They are just down-to-earth, hard workers, if they are given an opportunity.

We feel that over and above the present 11,500 licences covered by operating authorities, there are many hundreds more; that is, trucks where the operator is authorized for two to three trucks and he is operating six, eight and 10 trucks. With the advent of the commercial vehicle operators registration, which we welcome, those numbers are going to take a dramatic climb.

I would remind this committee too that we are the only industry in Ontario that has gone through deregulation and suffered it from 1968 to 1975. I might say that there was an 80 per cent turnover in licences during that period, so we know whereof we speak of what we see coming.

We are disappointed to note that there is no strengthening of the language in Bill 152 of section 107 of the Highway Traffic Act, which is the shipper responsibility. All responsibility is put on the trucker, which is probably quite proper, yet at the pits and quarries in Ontario, we are unable to get axle-weighted at the scales. Under the proposed CVOR sanctions, the truckers could stand to gain demerit points for axle weights or gross overloads.

The present section 107 of the Highway Traffic Act holds little threat

for pits and quarries operators, so they do not have to pay much attention to how they load the trucks. We feel they do have a degree of responsibility to see that the laws of the land are observed. Therefore, we feel there should be a reflection in stronger language of the present section 107 of the Highway Traffic Act.

We hope the committee has had a chance to look at some of our problems. The brief is not a very large or articulate one, but it expresses our concerns in a very few areas. We would be pleased to answer any questions you may have.

Mr. Chairman: Thank you, Mr. Sauvé. I do not think you need to be defensive about the brief; it is articulate and direct. A number of members have indicated an interest in asking you some questions.

Mr. Pouliot: It is simply appalling that has been allowed to take place, Minister. Fair play certainly has not been the order of the day; in fact, the near exception. There has been no reciprocity in the affair. Sir, would you favour the present system whereby the test for entry, the test to be licensed or the test for operation, or the onus of that test, is the proof of public necessity and convenience?

Mr. Sauvé: We certainly favour that over what is being proposed. At least then they have to produce a live body before the board and not a piece of paper signed by someone, which is how the new system will work. We do have an opportunity to appear before the board and oppose that application, pointing out whether it is an Ontario or out-of-province trucker.

Mr. Pouliot: I have a supplementary question, which brings us to the proposed regime. It is sort of a reverse onus, whereby if you can provide insurance or willingness, only under extraordinary circumstances should you be deprived of a licence. I think, Minister, that is the intent and the spirit of the legislation. You have made that presentation clearly, sir. You see the game becoming wide open, even a worse scenario than what you have to experience and what you have to live with under the present system.

Mr. Sauvé: That is our concern.

Mr. Wildman: I am interested in your comments about Bill 152 in regard to axle weights, the concern about weigh scales and the responsibility of the pits and quarries operators.

The new system is going to be a system of demerit points similar to what we have on drivers' licences now, but involving safety violations and weight violations as well as speeding tickets and traffic violations. Since the responsibility is going to be on the owner and the operator of the truck, is it fair for the ministry to expect that an experienced driver will know how much he has on his truck, what the weight is gross and the weight on each axle?

Mr. Sauvé: Any time we have approached the ministry with this problem, the answer is, "These are experienced truckers and they should be able to gauge from experience what the load is." You cannot tell what you have on an axle. There is no way you can tell. In fact, you cannot get the weight on the front axles, and that is a real problem for us.

Mr. Wildman: Before I get to that, you are talking specifically about aggregates.

Mr. Sauvé: Right.

Mr. Wildman: When you are talking about aggregates, you are saying you cannot tell the distribution of the weight. Can you tell the gross?

Mr. Sauvé: Reasonably. Rates do vary from region to region. Sand in Ottawa does not necessarily weigh the same up north or in southern Ontario.

Mr. Wildman: Also on the time of year and the weather.

Mr. Sauvé: Right.

Mr. Wildman: You are saying you cannot guesstimate axle weights accurately. As you understand it, are you now and will you be allowed some kind of leeway or tolerance on an axle weight?

Mr. Sauvé: There is a leeway or tolerance, if you will, of 500 kilograms right now.

Mr. Wildman: Is that adequate in your view? Obviously, the Ministry of Transportation and Communications has to be concerned about the condition of the roads. They do not want overweight trucks or vehicles driving along the roads.

Mr. Sauvé: As I say, at present there is that tolerance, but many jobs have no scales and that is a problem. I do not know how you deal with it. On most jobs--not everything comes out of every pit and quarry. If there was a gross weight method, it would certainly be one we had back in 1968, the 1970s, when you went strictly by the gross weight. The problem was not as bad then as it is now.

1730

Mr. Wildman: You mentioned earlier that you could not put it over the front axle.

Mr. Sauvé: Right.

Mr. Wildman: How do you respond to the comment I have heard from MTC officials on occasion that you are purchasing trucks and licences that would allow for very heavy weights on the front axle but that is not acceptable to MTC, so perhaps you should not be buying for that licence? MTC is telling you you have to load that way.

Mr. Sauvé: Right.

Mr. Wildman: I think your position is that it is not safe to drive that way. Is it?

Mr. Sauvé: That is one point. The other point is, we have no control over the loader operator who is dumping the stuff on the truck or the bulk loader putting it on. They say, "You are going to take five buckets," or whatever, "or go home."

Mr. Wildman: Let me look at the other side. I do not know whether you could, but hypothetically, if you could somehow control it, is it safe to drive with the concentration of the weight over the front axle?

Mr. Sauvé: Do you mind if I ask one of my colleagues here to comment on that?

Mr. Wildman: Okay.

Mr. Jones: I do not personally feel it is safe to drive with the majority of the load on the front axle of a truck. You are trying to steer it with that. In the event of a tire failure, anything can happen, and a new tire can blow.

Mr. Wildman: Yes. If it does, you are finished if it is on the front end.

Mr. Jones: I personally had the occasion of blowing a front tire with a load on, and you do not come away from it too many times. Reverse loading is a problem. You are talking about weight distribution. If you have a 15-foot-long box on a dump truck and the bucket on the loader is 12 or 13 feet wide, it makes load distribution a very difficult thing to ascertain. If you go like this, "Well, that is enough," a little tip of the bucket and there is another tonne or two.

Mr. Wildman: As I understand it, that is already a problem for you under the current system.

Mr. Jones: Correct. But since we are changing the system, if we can change something else along the way, we might as well.

Mr. Wildman: I can understand that, but as you see the legislation drafted now, is this problem addressed in it?

Mr. Jones: No, because of the axle weighting as it relates to a number of offences, as it relates to the number of demerit points you are going to lose.

Mr. Wildman: In effect, because of the demerit system that is coming in, it is going to make it more difficult for you to operate.

Mr. Jones: Right, and to follow my comments a little further, as it relates to your lack of job security if you do not take the five buckets. If you cannot take a big enough load, the man is going to say, "See you later."

Mr. Wildman: You are saying that if he is demanding you take this size of load, then he should have some responsibility in the system.

Mr. Jones: Exactly.

Mr. Wildman: Thank you.

Mr. Pierce: Mr. Sauv , your brief deals quite extensively with the problems you are experiencing in eastern Ontario with respect to outside or out-of-province truckers. I am wondering if your suggestions in your brief are the same for your neighbour as they are for the out-of-province trucker.

Mr. Sauv : No.

Mr. Pierce: What I am saying is, if the guy down the road wants to get into the business, and you know what is required for him now in order to get into the business, to show need and necessity, do you think that has to stay for him as well as it should for the out-of-province trucker, or do you think there should be regulations to limit the out-of-province trucker in your area of operation?

Mr. Sauv : In fairness to the whole question, I would have to say it would have to apply to everybody. It would have to be equal, too.

Mr. Pierce: Your title is the Ontario Dump Truck Owners Associations. Do you represent dump truck operators right across the province, from Manitoba to Quebec?

Mr. Sauv : Where there are local associations, they are, in the main, members of the group. There are more than those that are this list.

Mr. Pierce: Do you know that the same problems exist from Manitoba to northern Ontario that exist from Quebec to eastern Ontario?

Mr. Sauv : They seem to go in for a larger-size box in that end of northern Ontario. I cannot say what the problems are. There is not that amount of work we would become involved in or deal with them, but they do have larger boxes. It says the same thing surrounding Toronto here. Twenty-foot or 21-foot boxes are quite common.

Mr. Pierce: One of the problems in northwestern Ontario is an influx of trucks from northeastern Ontario for major jobs. Then they all head back to northeastern Ontario again. When you start talking about relocation or allocation of trucks from one area to another or from one province to another, you also get into regional disparities in how you allocate trucks.

Mr. Sauv : That is very true. My only answer is that more highway work goes on across the north than in eastern Ontario most of the time.

Mr. Ramsay: Hear, hear.

Mr. Pierce: I beg to differ with you a little on that one, but that is an argument for another day.

Mr. Wildman: There is certainly no city the size of Ottawa--

Mr. Pierce: I have a fairly large file folder of applicants who are trying to get into the trucking business because the large industrial world is not there in northern Ontario. As a result, individuals look for ways to provide incomes and the necessities of life for their families. They buy a truck and get into the business and they are prepared to work lots of long hours. They are prepared to do a lot of hard work to survive, but they find it very difficult when they come up against a bureaucracy of trying to get a public commercial vehicle licence, because they have to prove need. Yet there is a need there that is going unsatisfied because some truckers are controlling the market and demanding higher prices than would normally be paid for somebody who wants to come into the business.

In fairness, I think most truckers come first from one truck and then two trucks, three trucks and then five trucks. Then they ask for regulations to protect their industry of five trucks, but what about the guy who is still out who wants to start off with one truck and is prepared to go that extra mile to make sure he makes a living?

Mr. Chairman: I know Mr. Jones has an answer.

Mr. Jones: I do not really see where one truck goes to five trucks very quickly. We are talking about seasonal employment. I am in the near north of Ontario. We have a very short season. There is not very much to do for snow

removal in the winter. We come into springtime and we go into half loads. Half loads come off some time around May 15. If you are lucky, there are a couple of highway projects in the area that help you out. Other than that, all you have is just what is available locally.

As far as shutting the door on new people coming in is concerned, I do not see that that should be a way of life either. At the same time, I think we deserve some degree of help to protect the people who are already in the industry.

Mr. Chairman: Where do you live that there have been these highway projects every year?

Interjections.

Mr. Pierce: There may be a difference in what happens in northwestern Ontario and what happens in northeastern Ontario in respect to dump truck operators because in many cases a dump truck operator will convert his truck to a pulp-hauling truck in winter and then go back into dump trucks in summer.

Mr. Davis: But he may not have the equipment, the right kind of truck, to do that.

Mr. Pierce: That is right.

Mr. Davis: It is not every tandem that can be converted.

Interjections.

Mr. Gordon: It did not take them long to plan that. For two years, nothing. Now you are not going to--

Mr. Pierce: We are into the highway party. You see what you have got us into here now.

Interjections.

Mr. Ramsay: Your government never did a damned thing about it.

Mr. Gordon: You should be ashamed of yourself.

Mr. Ramsay: Never did a god-damned thing.

Mr. Gordon: Swearing.

Mr. Chairman: Order.

Mr. Pouliot: The language of the member--

Mr. Gordon: Yes, the language is deplorable.

Mr. Pouliot: The language of the member for Timiskaming is unparliamentary.

Mr. South: But very descriptive.

Mr. Gordon: It is absolutely deplorable.

Mr. Chairman: Order. We have the dump truck association here. I think most of us would like to hear from them. Mr. Gordon, when we get into clause-by-clause, why do you not go at it hammer and tongs with Mr. Ramsay then?

Mr. Sauv : Large groups show up at the Ontario Highway Transport Board hearings in the north, opposing applications. The board weighs that on the expertise it has developed and the evidence it hears from the Ministry of Transportation and Communications for the construction for the coming year and its general knowledge it acquires from whatever sources. It is the truckers themselves in region 6 who are opposing a lot of the applications.

1740

Mr. Pierce: Those are the same truckers, with one-operator vehicles or one-truck operations that have certainly, through their entrepreneurship, drive and will to make things work that you talked about, found the way to make themselves bigger operators.

Mr. Sauv : I look at the statistics I have received from the ministry for last week for region 6, your area. There are 398 licensed operators there, covering 768 trucks, which is less than two vehicles per licence.

Mr. Wildman: They are not big operators.

Mr. Sauv : That is right.

However, I am sure each region feels, as do Sudbury and Ottawa, that it should try to protect what it has in it.

Mr. Gregory: Mr. Chairman, just to pursue that a bit, one of the problems seems to be the Quebec truckers, who are going back and forth rather freely. Do Quebec trucking companies compete on a bid basis for contracts in Ontario?

Mr. Sauv : The dump truck industry normally walks in. They come in right into the Ottawa area from across the border. They will offer their six tandems at \$28 for the summer season, whereas the Ministry of Transportation and Communications' rate and our guideline rate is \$38.

Mr. Gregory: That is what I was driving at. Are they undercutting prices, in your opinion?

Mr. Sauv : That is right. They are, definitely.

Mr. Gregory: Are they doing this on a company basis or are they doing it on an individual trucker basis?

Mr. Sauv : This one case is an individual with six trucks.

Mr. Gregory: In other words he is a company?

Mr. Sauv : That is right. He cannot get a licence to operate in Quebec.

Mr. Wildman: Because they are frozen in Quebec?

Mr. Sauvé: That is right. So he is coming over here.

Mr. Gregory: He has a licence to operate here?

Mr. Sauvé: Yes, but not for six trucks; for fewer than six trucks.

Mr. Gregory: So he is operating illegally?

Mr. Sauvé: Of course, there is the urban area question. If he stays within the city of Ottawa, he does not need a public commercial vehicle licence. We would like to see that changed, but that is another story.

Mr. Wildman: He is licensed with the municipality then?

Mr. Sauvé: No.

Mr. Gregory: Strictly within the area of the municipality then?

Interjection: It is like Mississauga for taxi drivers at the airport.

Mr. Sauvé: There is an agreement or an understanding, if you will, between the Ottawa-Carleton region and the Outaouais district on the other side, whereby each recognizes the other's registration and neither region requires a plate.

Mr. Gregory: Mr. Chairman, could you tell me who has the floor? Is it myself or is it Mr. Wildman, who is behind me at the moment?

Mr. Chairman: Mr. Gregory, there is no question about it, it is you.

Mr. Gregory: I do have the floor? I see. I thought I was kind of losing control there for a minute. It is something I do not normally do, but I keep hearing this annoying noise behind me.

Mr. Wildman: You always lose control.

Mr. Gregory: Are you all right back there? Have you settled down now? Thank you.

What we have really are some Quebec truckers who are unlicensed. Since they are not licensed Quebec truckers and they do have a licence in Ontario, are we proper in referring to them as Quebec truckers?

Mr. Sauvé: I am not sure I follow your question.

Mr. Gregory: I am saying if they do not have a licence to operate in Quebec and they do have a licence to operate in Ontario, I am inclined to think they should be regarded as Ontario truckers rather than as Quebec truckers.

Mr. Sauvé: May I say that they buy all their fuel in Quebec and they spend all the dollars that they earn on the Ontario side on the Quebec side, we gain nothing out of them, nor does the allied industry on the Ontario side.

Mr. Gregory: I am not condoning it, I am just asking a question. How do we view them as Quebec truckers when they do not have a licence to operate there?

Mr. Sauvé: They reside over there. They pay taxes to Quebec, they do not pay them to Ontario. The situation has gone on for so many years that we have come to think, if you will, that we should regard them as Ontarians.

Mr. Gregory: Maybe the minister or the deputy minister could explain to me how this works. When you are not licensed in Quebec, you can hardly be regarded as a Quebec trucker. When you are licensed in Ontario, you have to be an Ontario trucker, even though you garage yourself in Quebec. What is the situation there?

Mr. Chairman: Is there anybody who can give us an answer?

Mr. Smith: We are describing individuals who live on the Quebec side and operate within the city of Ottawa. In the city of Ottawa, they would be exempt from the Public Commercial Vehicles Act. If they operate beyond the city of Ottawa, then they must be licensed by the Public Commercial Vehicles Act. They would have to apply to our board and obtain a licence for the registration of the vehicle as a vehicle, not with any authority to do anything. Maybe in Quebec--they may have Quebec plates on it.

Mr. Gregory: He would not have Quebec plates if he cannot get a licence in Quebec, would he?

Mr. Smith: He would have no authority to haul anything in Quebec. He would only have authority in Ontario. To obtain authority in Ontario, he would have to appear before the transport board and obtain that authority. He may be based in Quebec, but I guess he is an Ontario carrier.

Mr. Gregory: He is a commuter. He commutes to work.

Mr. Smith: That is correct.

Mr. Gregory: Would there be many truckers who would fall into this category?

Mr. Sauvé: Better than 50, sir, in the Ottawa area. That problem applies all along the border, in the Pembroke area, the North Bay area, Sudbury. Sudbury experienced an influx of 24 trucks last summer that came in to work at the Inco plant and cut the rate by \$7 an hour. Because it was in the Inco plant, on its property, they did not require any kind of licensing. They worked there all summer and the local boys were parked.

Mr. Davis: The rate, which we are always concerned about, was reduced from \$1 per ton to 55 cents. Local truckers in Sudbury cannot work for those rates. It was shown that even those guys who came from Quebec could not work for those either. Many of them returned to Quebec because they could not make ends meet at that rate. Many of those who left, left their trucks behind because they could not afford to drive them back.

Interjection: They are still sitting there.

Mr. Gregory: Could they operate those trucks in Quebec within a municipality?

Mr. Sauvé: No.

Mr. Gregory: So they are unable to operate those trucks at all in Quebec?

Mr. Davis: They could probably work for some large company within a certain property.

Mr. Gregory: Some large company that had a licence.

Mr. Davis: Like Inco property. You do not need a licence to operate a piece of equipment on Inco property. That is the whole idea. These are good jobs but there are not that many. They may be year-round, but they do go under tender and they do change hands. It has always been an advantage to be a resident of, let us say, the area of Sudbury and be in the dump trucking industry to get this kind of work. If you did, maybe you did that for a period of time and you were well off for a couple of years. Then if you lost it to somebody else, later, that was your tough luck.

But now these people are coming in from other provinces and taking the work, because other provinces are not doing as well as Ontario. That is really the whole problem. I have heard of trucks coming from Alberta to Ontario and taking up work. Things are really rough in Alberta. Why is it that we have to suffer that, now, in the Sudbury area?

Mr. Gregory: When we are talking about this, are we not suggesting some sort of system of zoning, in that trucks will operate within a designated zone set up by the ministry perhaps, and they should not go beyond it? I am not a trucker and I fail to see the distinction here. When you are having work taken away from you, if I were a trucker, I do not think it would matter to me whether they were coming from Quebec or from North Bay or even from Mississauga, where most of the trucks are. It would not much matter where the truck comes from, unless you were thinking in a racial way, and I think none of us would want to do that. A truck is a truck is a truck, whether it comes from Quebec or the United States or wherever.

The proof of necessity alone is not really going to solve your problem. The only way you are going to solve your problem, really, is some form of zoning for licences. Say within a designated area, you must have this zone licence to be able to operate there. Trucks from Mississauga must operate within Mississauga and environs, which include Metropolitan Toronto since we took it over; something of that sort.

Mr. Chairman: How would this fit under any kind of free trade?

Mr. Gregory: It does not. I am asking the questions.

Mr. Chairman: I am sorry. You have the floor.

1750

Mr. Gregory: Why do we not determine what Mr. Sauvé feels on this?

Mr. Sauvé: When we came back under the Ontario Highway Transport Board in 1975, when they established a class R licence, every trucker was then granted a regional licence, for one region. In the wisdom of the ministry it was extended to two regions. If you wanted a licence beyond that, or for the province, you had to go to the board for approval. That is the way it is working yet.

We liked the regional licence we had and we are not necessarily happy with the licence rewrite. With a regional licence now, you look at the map, know what you have got and where you can go. Under the rewrite system you have

to read X number of names, all that applies within that region. Every county, township, district and territory is named in the licence now; whereas, if you had a licence for region five or four, you knew what it covered.

Mr. Gregory: So it is your feeling that you prefer the regional system--

Mr. Sauvé: Yes.

Mr. Gregory: --for licensing. In your mind this would solve the problem and prevent, specifically, Quebec truckers from coming over into your region.

Mr. Sauvé: It would not solve that Quebec problem, sir.

Mr. Gregory: No?

Mr. Sauvé: I do not know how you stop them, unless we get full reciprocity, or the licences are put on a quota basis: so many licences per region, whatever the region is, based at a date, July 1, 1987, January 1, 1988, or whatever. I say this quite frankly. We would like to see a moratorium on the class Rs, period, for a couple of years. However, we know realistically we do not have a chance of getting that.

Mr. Gregory: Certainly this legislation--and I am not criticizing it--does not lend itself to that way of thinking. You cannot say we are going to have deregulation, but not necessarily deregulation.

Mr. Sauvé: Sir, when you think that the Ottawa-Carleton area has as many licensed vehicles--the next one to it is Metropolitan Toronto, which is ten times our size with 25 times the amount of work--yet Ottawa has over 545 licensed operators, plus the unlicensed guys operating, plus the Quebec trucks coming in. We have 700 trucks working around Ottawa. How do you get enough work to keep that number happy and keep the rate reasonable and viable?

Mr. Jones: I would go for the old regional system, if we can include the urban zone in it as well. What the urban zone creates is a nice little pocket where an operator who does not have a licence can sort of slide in. He is doing all right in the urban zone, but he can sneak out the odd time and take payloads into a region where he should have a licence. If he does not get caught, he is all right.

Believe me, it happens a lot. North Bay is the second largest area in Canada, geographically speaking. You have about 50 square miles in which a man can run. All the pits are within the city limits. There are 50 square miles where you can run without any licence at all, and the Quebec border is only 35 miles away.

Mr. Pouliot: You cannot be serious. You mean here, right now, this is happening nowadays?

Mr. Jones: Yes, sir.

Mr. Sauvé: Timmins has the same problem.

Mr. Pouliot: I believe you. I just find it very shocking that we would have no policing, and yet we are suggesting something which will be five or six times harder to police.

Mr. Jones: What would you police when there are no laws being broken, sir?

Mr. Gregory: That is the end of my questioning, but I would like some sort of clarification. Perhaps the ministry people can put their heads together and clarify that matter of the Quebec truckers. Are they Quebec truckers or Ontario truckers? I listened to what you said, but I did not quite understand it. That may be more my fault than yours, I think.

Mr. Smith: Let me try to say it again. There are two issues: One is the question of vehicle registration and the paying of registration fees. The other is the question of authority to haul certain goods.

In the first case, in Canada, registration fees for commercial vehicles are prorated based on the distance travelled in each jurisdiction. If these vehicles spend 90 per cent of their time in Ontario, then they pay 90 per cent of their registration fee in Ontario. The plate on the vehicle may still be a Quebec plate, but 90 per cent of the registration fee would be paid to Ontario if that is where 90 per cent of their activity is. That is the registration issue.

Mr. Gregory: Mr. Sauvé tells me there are truckers who are not licensed in Quebec.

Mr. Smith: There are two issues. There is licensing in terms of vehicle licence and the registration fee for that. I believe he is discussing licensing in terms of authority to carry certain commodities. These vehicles may not be licensed in Quebec to carry anything.

Mr. Gregory: That hardly makes him a Quebec trucker then, does it?

Mr. Smith: I am not sure what is a--

Mr. Gregory: Just because you are driving a truck does not mean you are a trucker, unless you carry something.

Mr. Smith: I guess so, yes.

Mr. Gregory: In effect, you have a non-Quebec trucker who is not a trucker in Quebec and he does have a licence in Ontario.

Mr. Smith: Call him a Canadian.

Mr. Gregory: Right, he is Canadian. I am not making any difference. There are no walls up on that border that I know of. All I am trying to clarify is whether we can regard him as a "foreign" trucker from Quebec, when, in effect, he is licensed in Ontario.

Mr. Smith: We do not classify people by domicile, in any case. If they are licensed to operate in Ontario, then they are licensed truckers. They might have their house in New York or it might be in Quebec or wherever, but they are licensed to operate in Ontario.

Mr. Gregory: So these truckers we are talking about are really Ontario truckers, some of them.

Mr. Smith: In terms of having an Ontario licence, yes. An Ontario licence to carry certain goods.

Mr. Gregory: I think I got an answer, did I not?

Mr. Sauvé: In the dump truck industry, the prorating of the plates does not apply to the Ottawa-Carleton and Outaouais districts. They are exempt from that. Ontario does not get a portion of its commercial plate fee.

Mr. Pierce: Mr. Sauvé, these trucks that come into Quebec--let us refer to the six trucks that you were talking about--do they come in with a Quebec plate on the truck?

Mr. Sauvé: Yes.

Mr. Pierce: So they are Quebec truckers.

Mr. Sauvé: Right.

We had an excavation downtown, a big building going on in Ottawa, in January and February. Because the material was going over to the Quebec dump, they had to take in 40 Quebec trucks and 10 Ottawa trucks. Do you call that fair? You can understand the rage it generates.

Mr. Chairman: Can we move on? Some of us have commitments at six o'clock. I know I am not the only one. Let us move on quickly. Mr. McGuigan.

Mr. McGuigan: Most of the points have been covered, but I wanted to go back to the question of loading trucks. I can certainly sympathize with a driver not being able to look at a load, just scale it with his eye. The only way you really do it is to take it over a scale.

I come from an area in southern Ontario that is a gravel-loading area. In the last 15 years or so, I think all those people have put in scales because they charge about \$2 a yard for the gravel and they do not like giving away free gravel. It surprises me that you do not have--

Mr. Sauvé: Axle weight.

Mr. Davis: Most pits do have scales. It is the axle weight measurement.

Mr. Wildman: They are measuring gross weight.

Mr. Davis: Yes, they measure gross weight, but they do not measure the individual axle. That is done by the guy with his little portable scale. He pulls the trucker over and says, "Lift up that axle" and checks the axle and says: "You are overweighted there. Here is your fine, and away you go." He is going to nail just about every trucker he pulls over. It does not matter who is driving that truck, a 30-year man or a one-year man. Just about every time he pulls the truck over, he is going to nail the trucker. The guy with the pencil knows it and the trucker knows it.

Mr. McGuigan: Just a little comment: I noticed at this weigh station that was opened last week, the scale is a split scale. It can take more than one axle and individually weigh those axles. I suppose it is a matter of time until that will be built throughout the province.

Mr. Sauvé: That hopefully will be.

Mr. McGuigan: Hopefully it is in the books. I think it is.

Mr. Chairman: Mr. Wildman, do you have a quick question?

Mr. Wildman: Yes, actually, two short questions. First, on the question of weights, I understand that in British Columbia--I am not sure if it is used for the dump truck industry but certainly in log trucking--the truckers themselves use portable axle-weighing devices in the trucks. I understand they are very expensive and there are problems with the longevity and how accurate they remain over a long period of time. But is that one option that is open to you to deal with the problem of axle weight?

Mr. Sauvé: It is an option. I believe the cost is somewhere around \$2,500 for these items, to put on your tire. It can tell you what the gross load of the vehicle is, but it costs about \$2,500. At the rates we are working for today, we cannot afford that.

If I may enlarge on that, in British Columbia the rate is \$45 an hour. It is set by the Teamsters union and everybody pays it. They have to pay it. You do not work if you do not belong to the Teamsters. They have that protection, or whatever you want to call it. We have not got it.

Mr. Wildman: Obviously, the question of price affects what you can do and how you can operate.

Mr. Sauvé: Obviously, and you learn to be limited to what you can carry on your truck. You are going to have to have a higher price for your goods to get a return.

Mr. Wildman: Yes.

Mr. Sauvé: It is as simple as that. If this deregulation is intended to lower prices, that is going to be a pressure on safety. The guys are going to tend to carry heavier loads and they are going to evaluate whether it is worth their while getting a ticket every time they go down the road.

Mr. Wildman: Except that the new demerit point system is going to make it very difficult for--

Mr. Sauvé: The new demerit point is going to put more pressure on them, and they are going to say: "It is not worth it after the sixth load. After the sixth load, I won't do it." So everybody is going to do six loads overweight until they get caught and after that, maybe they will slow it down. They will slow it down, all right, and maybe they will have to take their truck and hand their keys back over to their creditors and be down the road.

Mr. Wildman: Because, obviously, they have to make their payments.

Mr. Sauvé: So there will be one more family back on welfare.

Mr. Pouliot: And with the high cost of insurance nowadays, the ripoff that has taken place and so on--

Mr. Wildman: The other matter I wanted to raise was on the Ottawa-Quebec situation. Is it not the case that we are really talking about two things? We are talking about truckers who operate within the municipal boundaries, the Outaouais and Ottawa-Carleton districts, on the one hand, and on the other, we are also talking about Quebec truckers or out-of-province truckers coming in and taking other types of jobs that are outside those municipal boundaries. So there are really two things you are discussing.

Mr. Sauvé: Right, that is why--

Mr. Wildman: Okay. My question to the ministry is: Is it possible for a truck to have a Quebec vehicle registration plate on it and an Ontario public commercial vehicle plate on it?

Mr. Smith: Yes.

Mr. Wildman: Okay. But you are talking about people who do not have the Ontario PCV?

Mr. Sauvé: Well, most of them do not have it in the Ottawa area.

Mr. Wildman: Because they are operating in the municipal boundaries.

Mr. Sauvé: That is right. They are coming in with loads. They are coming over to pick up one, and then suddenly, they are working within the city of Ottawa and our guys are sitting parked.

Mr. Wildman: And this happens not just for aggregate but for snow-removal vehicles.

Mr. Sauvé: Exactly.

Mr. Chairman: Final question to Mr. Gordon.

Mr. Gordon: Did you hear the comment I read from the Greater Northern Ontario Trucking Association earlier this afternoon, pointing out their fears? Do you feel that their fears are well grounded and it is going to put some of the guys out of work in the Sudbury region?

Mr. Davis: I do.

Mr. Gordon: You do? Right.

Mr. Davis: I represent that group you are talking about, so I really believe that is the case.

Mr. Chairman: Some legitimacy anyway, right?

Mr. Gordon: I think you have helped us all to get a clearer picture of where the dump truck operators stand with this new bill.

Interjection.

Mr. Gordon: Yes, but you are going to be hearing a lot of people.

Mr. Chairman: Mr. Sauvé, Mr. Jones, Mr. Davis, Mr. Carmichael, thank you very much for your presentation before the committee. You can see that you raised a number of questions that have stimulated the members. Thank you very much.

The committee will adjourn until Wednesday afternoon following question period.

The committee adjourned at 6:03 p.m.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

TRUCK TRANSPORTATION ACT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT

HIGHWAY TRAFFIC AMENDMENT ACT

WEDNESDAY, JUNE 10, 1987



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, F. (Nickel Belt NDP)
VICE-CHAIRMAN: Reville, D. (Riverdale NDP)
Bernier, L. (Kenora PC)
Caplan, E. (Orillia L)
Gordon, J. K. (Sudbury PC)
McGuigan, J. F. (Kent-Elgin L)
Offer, S. (Mississauga North L)
Pierce, F. J. (Rainy River PC)
South, L. (Frontenac-Addington L)
Stevenson, K. R. (Durham-York PC)
Wildman, B. (Algoma NDP)

Substitutions:

Hart, C. E. (York East L) for Mr. McGuigan
Ramsay, D. (Timiskaming L) for Ms. Caplan
Sargent, E. C. (Grey-Bruce L) for Mr. South

Also taking part:

Gregory, M. E. C. (Mississauga East PC)
Lane, J. G. (Algoma-Manitoulin PC)
Pouliot, G. (Lake Nipigon NDP)

Clerk: Decker, T.

Witnesses:

From the Ministry of Transportation and Communications:

Fulton, Hon. E., Minister of Transportation and Communications (Scarborough East L)

Smith, T. G., Assistant Deputy Minister, Safety and Regulation, Registrar of Motor Vehicles

From the Industry Consortium on Transportation:

Carter, T., Vice-President, Canadian Council of Grocery Distributors

McCalden, D., Chairman; National Manager, Physical Distribution, Sears Canada Inc.

Probst, L., Vice-President, Distribution, Cobi Foods Inc.

Individual Presentation:

Sommerville, T. J., Legal Counsel

From Groupe Robert Inc.:

Robert, C., Owner-Operator

From Manitoulin Transport Inc.:

Smith, D., President

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, June 10, 1987

The committee met at 3:41 p.m. in committee room 1.

TRUCK TRANSPORTATION ACT
ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
HIGHWAY TRAFFIC AMENDMENT ACT
(continued)

Consideration of Bill 150, An Act to regulate Truck Transportation; Bill 151, An Act to amend the Ontario Highway Transport Board Act; and Bill 152, An Act to amend the Highway Traffic Act.

Mr. Chairman: The standing committee on resources development will come to order.

We are missing one caucus, but we phoned the whip's office and they know we are going to start. We have a time problem this afternoon. There are going to be some votes in the Legislature at 5:45 p.m. We want to move on as quickly as we can, so we do not cut people short at the end of the afternoon.

We are here to discuss the three trucking bills. We have with us this afternoon the Industry Consortium on Transportation. Mr. Carter, who I have met, I hope will introduce to the committee the rest of his very impressive-looking group.

INDUSTRY CONSORTIUM ON TRANSPORTATION

Mr. Carter: Thank you, Mr. Chairman.

The chairman of this consortium is David McCalden, who is with Sears Canada Inc. I would like to defer to him to look after our delegation.

Mr. McCalden: Minister, Chairman, and members of the committee, thank you for hearing us this afternoon.

We view these transportation bills as so important that we formed a consortium. I will take a moment--you have our paper before you--to explain to you why we came together as a consortium.

This is not new legislation. It has been under study now since 1983. A number of us played a very active role in the formation of the bill at that time. It was a different bill at that time. I think Mr. Fulton will recall that the consortium came together even before his time, to give encouragement to government to bring forth proper legislation and bring the trucking industry in Ontario into the 20th century. This is the reason why we have the consortium.

I will illustrate who the consortium is. I will read it into the record. I do not plan to read the brief, even though it is reasonably short. We have the Canadian Council of Grocery Distributors, Canadian Industrial Traffic League, Canadian Manufacturers' Association, Grocery Products Manufacturers of Canada, Private Motor Truck Council of Canada, Retail Council of Canada and the Board of Trade of Metropolitan Toronto.

If you read the next paragraph you will see a number of these organizations will be appearing before you, on their own behalf. Again, I would like to emphasize the reason for the consortium; it virtually represents all the major shipping groups in Ontario. I would have to say our members probably ship the vast majority of merchandise that moves in Ontario. Consequently, when we speak, we speak for virtually the whole shippers' side.

The last paragraph on the page will say that CITL, who are going to appear before you, the board of trade and the Canadian Manufacturers' Association will make their own presentations at that time.

While it has a lot of weight, our presentation will be at the high level, rather than be dealing with some of the lower details, which will probably be taken up by the other organizations.

I am sorry; I ran through this and did not introduce the group. If I may introduce the individuals right now: Tim Carter, who is from the Retail Council of Canada; myself, I am with the retail council and also with the board of trade; Lou Probst, who is vice-president, distribution, at Cobi Foods, is also with the Grocery Products Manufacturers of Canada; David Armstrong is with the GPMC; Holger Larsen, director of transportation, Oshawa Foods, is with the Canadian Council of Grocery Distributors; Bob Hardie is president, Private Motor Truck Council; and Phil More, manager, supply and transportation services, Canada Colors and Chemicals Ltd., is the representative from the CITL. These are the gentlemen with me.

I am sorry to overwhelm you, but we had to have all the people who represent the different associations. Even though the Canadian Manufacturers' Association is not represented here by a person, it is part of our consortium.

We have four or five fundamental points to make. The first point is that we want to support the legislation to the extent that we would like to address to you the window of opportunity we have on this legislation.

As I understand it, you have to make a report back on the 23rd. We would certainly like to think that with the proper changes, we could get third reading before the House convenes. I know it is at the whim of a lot of other people besides yourself, but we think so much time and effort on the bill will do so much for Ontario that we think it is most important you make every effort to get it before the House sits.

Hon. Mr. Fulton: You have my assurance we will be making that effort.

Mr. McCalden: Thank you.

Mr. Chairman: He did not even say "However."

Hon. Mr. Fulton: However.

Mr. McCalden: The first point we want to make, and it is a point we have made consistently over periods of time, is that our first major concern with the bill, other than that we think it is good legislation, is the test that relates to public necessity--the public interest test. I have it fixed in my mind that in the old legislation it is called a market test. Now it is called the public interest test. In our judgement, and in the judgement of the shippers, that part of the legislation is redundant and is not necessary. We would prefer to go to "fit, willing and able" just as soon as possible.

This is not a new idea. The industry has gravitated or repositioned itself; it really started in 1980 with the US changing their legislation. As I said previously, number of us have been actively involved in this legislation for the last five years. We really do not see why we have to wait another five years before those people who want to get into the industry could get in with a public interest test.

We are concerned--and different people read it in different ways--part of the original comments about the public interest test was supposed to be "an extraordinary situation." Those were the exact words. We cannot in our own minds define an extraordinary situation. We would think it would be very retrograde if the legislation allowed the Ontario Highway Transport Board--if this public interest test was triggered at virtually every application of any size. I do not think this is the intention of the legislation, but we are very concerned that this may in effect happen.

Certainly, for the best interests of the shipping--I honestly think, for the trucking organization, we should go to "fit, willing and able" as soon as possible. I know that flies in the face of C-19. However, if you really look at some of the presentations the Ontario Trucking Association and the Canadian Trucking Association did on C-19, you will find they want to go to "fit, willing and able" as soon as possible too. The only provision they make is that they want to have a national safety code in place.

We fundamentally have the shippers and the carriers saying, "Let's go now," while we have bureaucrats saying, "Let's wait for five years." We are the people in the trade. We pay the bills. They are the people who sell us a product. If we can get a national safety code in place--in our judgement we feel it is virtually in place now; we understand the funding has been done. I saw a number of these people out in Victoria spend an awful lot of time at the Canadian Conference of Motor Transport Administrators meetings getting the national safety code in place. You in your own area, Ontario, have another application that will highlight safety as part of this legislation. If we do have safety in place, why are we waiting five years to go to "fit, willing and able"?

1550

That is the first message we want to leave with you. The second message we want to leave with you is on intercorporate hauling. Part of the legislation calls for 90 per cent. We think that is onerous. It is not in keeping with the legislation in other provinces. I believe all the Maritimes now have gone to 51 per cent or over 50 per cent. I understand Manitoba this fall is going to 51 per cent and BC is studying it as well.

Again, we feel this legislation is bellwether legislation as it applies to the provinces. This is the major province for trucking in Canada, so we should be leaders, not followers. We do not see any reason at all why the intercorporate should not go down to 51 per cent.

The third point we want to make is on the top of page 3. We had a little caucus before we came up here and we are very unsettled, I guess is the right word, or dismayed as to what you really mean in the legislation regarding publishing of rates. If you are talking about a price list that a carrier must have to give to customers, we have no problem with that. But if you are talking about publishing in a prescribed form and that the prescribed form be dictated by government, and possibly even filed by government, we are very much against that. We see no reason why there should be collective rate

making. We see no reason why carriers should publish their rates together. We see no reason why carriers should publish in a prescribed manner. The buying of transportation should be the same as buying this glass. How that carrier wants to present his pricing to his customers is his concern.

We have had two or three people sit around and look at the same wording and get two or three different interpretations of it. Our viewpoint, as we express it in here, is that publishing a rate as a price list is fine. We cannot see publishing it in a manner that it can be controlled by government. That is a relationship between the seller and buyer of the merchandise.

Hon. Mr. Fulton: We would like try to clarify that now. We are not looking for that kind of arrangement. You have a price list somewhere on your premises--

Mr. McCalden: We understand that, Minister. I think we are bringing to your attention and to the committee's attention that it is unclear, as we see it.

The fourth point we want to make is that we are now expressing some concerns regarding commercial vehicle operators registration. The CVOR hopefully is not a mechanism that is going to control entry; it is going to control safety. I was out of town, but a number of the people here sat in on the last meeting where the ministry took part, and it appears that the CVOR is becoming very convoluted and very complicated.

Our advice to you on the CVOR is to approach it in a very businesslike manner. Do not put a regulation--when we are going through a process of deregulating, if you will, over a period of time, do not catch us with a whole bunch of regulations here that are virtually unmanageable from a business point of view. That is only a comment, but I think you will see that comment is a thread through other shipper's groups.

Other than any comments that any of my cohorts would make, that is the tenor of our brief. Again, it has to be at a high level. We did not talk about specific items, but they will probably be brought up by the individual associations as they present their own briefs.

We are now open for any questions.

Mr. Chairman: Thank you, Mr. McCalden, for being so brief and coherent in your presentation. I am sure there are questions from members.

Ms. Hart: One area I am interested in is the publication of rates. The term "publication," I guess, is a term of art. Do you have a suggestion for this committee? You say it is unclear. How would you clarify that?

Mr. McCalden: I think a statement to the effect that any carrier who has a public commercial vehicle licence should have his rates available in a form he chooses. I think we are caught up in this "prescribed form," and we are wondering where that is leading us, I guess.

Ms. Hart: On intercorporate hauling, you gave us some provinces. You told us about the Maritimes; is that all three Maritime provinces?

Mr. McCalden: I believe so.

Ms. Hart: And Manitoba has already gone--

Mr. McCalden: No. Manitoba has proposed--I think it is in October--to go to 51 per cent for intercorporate hauling.

Ms. Hart: Any others that you know of?

Mr. McCalden: I understand that BC is seriously considering going down to 51 per cent.

Ms. Hart: I am not entirely clear about your point on the CVOR. I understand what you said about not wanting it to be unmanageable from a business point of view, but can you be a little more specific?

Mr. McCalden: I bow to the other people who are with me who were at that particular session. Lou, do you have any comments on that?

Mr. Probst: We are not against the CVOR; so I will put it in that context. The administration or enforcement of the CVOR, particularly the off-highway aspects of it, involves an enormous amount of record-keeping, which in many cases is new or an enhancement of the record-keeping on the part of the shippers that is taking place now, and it could involve sort of random inspections.

Let me give you a hypothetical example of our concern. If you are a shipper and you operate out of a number of plants in the province, or maybe even interprovincially because this presumably will take on a national aspect consistent with the national safety code, you may tend to have your fleets operating on a domicile basis within each of those plants; you may have multiple locations.

I know this may not happen, but it could happen that a government inspector may arrive at one of your locations, let us say head office, where there is no fleet at all, demand to see all the records you have faithfully accumulated around the province and give you a relatively short period of time to do that. Probably this is possible to do, but it is certainly new. It may require a lot more discipline, if you will, or more control of the record-keeping function than currently takes place, which is on the basis of what is needed to run a business rather than what is needed to satisfy a bureaucracy. Our concern is not so much the intention but what it could get into. We see it as maybe getting ourselves into a very, very elaborate and expensive record-keeping and control process.

Ms. Hart: Am I hearing you say that you would really like to be involved in the process of what the regulations actually are going to be?

Mr. Probst: It is more the enforcement part of it than the intent that we are concerned about. The bill does not address the limitations of enforcement. It does not provide the bureaucracy with any checks if they get very, very zealous in this thing.

Ms. Hart: Currently under the Public Commercial Vehicles Act, the trucking companies at least--I am not sure about private carriers--are subject to random inspections now.

Mr. Probst: Yes.

Ms. Hart: This is not a whole lot different, I do not think.

Mr. Probst: No, but it is a lot more detailed.

Mr. Chairman: Ms. Hart, would you allow Tom Smith, the assistant deputy minister, to make a contribution here?

Ms. Hart: Yes.

Mr. Smith: I just wanted to clarify. I think what you were describing are some of the actions that would result in implementation of a national safety code, which is not CVOR. That will be covered under future legislation. It is part of, say, a national code that will be implemented across Canada, and the intention is not to make it any more complicated than it has to be. But that is not CVOR. CVOR is essentially a record-keeping system within Ontario to record convictions and to allow for sanctions to take place on a consistent, reasonable basis. The kind of thing you are looking at is national safety code stuff, and it will follow the implementation of the national safety code.

Mr. Probst: We do not disagree with the intention. We are just a bit concerned about what might happen--not what is intended to happen, but what might happen.

Mr. Chairman: Mr. Probst, when you are replying, I wonder if you could lean forward a bit. Hansard is having trouble picking you up on the mike.

Mr. Probst: All right.

Mr. Smith: We understand your concern, and the intention is not to make it any more complicated than it has to be.

Ms. Hart: Thank you, Mr. Chairman. Those are my questions.

1600

Mr. Pouliot: Mr. McCalden, in your presentation--you will correct me if I am wrong, of course--you seem to stress the need for expediency regarding the reverse onus under the proposed legislation whereby public convenience and necessity will no longer be the order of the day; instead it will be replaced with "fit, willing and able," which is really the crux of the matter when we talk of intent. Would you help me in understanding why that expediency, why you would wish to forgo the proposed time for implementation in protesting the new law?

Mr. McCalden: I think the legislation should reflect the constituencies of the people in that area. I cannot speak for them, but read their briefs. I think the truckers, providing you give them a safety code, are prepared to go to "fit, willing and able." Certainly the shippers are.

I have to reverse the question and ask, why did the legislators want to have a five-year break-in period when we really had five years of the process to bring this legislation in place? If you look at what the transport industry was five years ago and what it is now, it is an entirely different industry. We have gone through a quasi form of deregulation and we say, why delay the process for five more years?

I think our concern is, are we really having regulation in another form? The way the bill is written, there is a tremendous amount of power in the board in that it can interpret the application in a manner that it can constrain. We do not think that is the purpose of the bill. We say, take that away now. We have had our break-in period. Who wants the five years, other

than the government? Do you have some infinite wisdom that the buyers and sellers of transportation do not have?

Mr. Pouliot: Along the same line, initially there will be provisions made, and you have acquiesced and addressed this, but are you familiar with the fact that by January 1, 1988, when there will be a second phase of obtaining a licence whereby the onus will be to prove that you are fit, willing and able? You mentioned five years, and yet January 1, 1988, is around the corner. In fact, the legislation, with the many, many government amendments that are surfacing, may not be passed by January 1, 1988. That does not seem to me to be unreasonable in terms of time to wait to file an application.

Mr. McCalden: That is not time to wait to file an application. I am saying the applications filed as of January 1 may be declined because the reverse-onus, public interest test will be triggered. That is our concern. If we could have some sort of a--it cannot be so. I understand; it is a safety net which the government wants to put in place. We are very concerned it will be triggered on almost every serious application, and we think that is not proper in relation to what has gone on in the past.

Mr. Pouliot: Would I be right in assuming then that the marketplace not always chooses better, but in this particular instance, the marketplace will regulate itself and will take care of what you are proposing and there will be no problem?

Mr. McCalden: The marketplace will not take care of itself if in effect every third application of a serious manner has to go through a market test and is declined.

Mr. Pouliot: Would you therefore view this sort of "government direction" as government interference?

Mr. McCalden: I would not want to put it as strongly as that. It is an adjustment period, and contrary to the federal bill, it does have a sunset clause. Why do we need five years for an adjustment before we go to "fit, willing and able"?

Mr. Pouliot: Would you feel, therefore, that the spirit and the intent of the proposed legislation would be deterred?

Mr. McCalden: I think we are expressing concern about the wording as to when the so-called market test will be triggered.

Mr. Pouliot: I have one more question. In your presentation, Mr. McCalden, on page 2, the second paragraph, you say, if I may quote: "Immediate use of 'fit, willing and able' criteria, we believe, is consistent with the encouragement of good operational safety practices." I certainly do not wish to sound cynical, but that is the kind of terminology everyone uses. Not that it is seen as motherhood, but people really recognize the need for safety. What I find appalling is the last part of that paragraph:

"In addition, at the wholesale level, trucks failing to appear at their scheduled unloading time create severe problems for their customers including out-of-stocks and operational disruption. In addition, often a missed appointment cannot be rescheduled for a full week. As a result, maintenance is imperative to avoid equipment breakdown and the missing of unloading appointments."

You seem to be saying that the need to meet a commitment while keeping competitive will become our guarantee and our standard for safety.

Mr. McCalden: I think what we are saying, and there are many sides to this particular question, is that in a competitive environment you cannot let your safety go because you are going to lose the business. Succinctly, that is what we are saying.

There are many ways of looking at safety. I do not think safety is an issue any more with the kind of CVOR safety aspect that we do have as part of this bill and with the national safety bill virtually around the corner; it has been fully funded.

We do not want to get into a debate about safety. We accept that safety is going to be part of this regulation and part of C-19. It is almost a moot point now.

Mr. Chairman: Any other questions from members? If not, thank you very much for your presentation to the committee. We finish the hearings from groups and then we spend a couple of days on going through each clause and dealing with the amendments to be put by the minister and any amendments the members might have. It is the stated goal of the committee to try to get it back into the Legislature before we adjourn.

Mr. McCalden: We wish you luck.

Mr. Chairman: Yes. The fact that there are three bills and there is a fair number of amendments is cause for concern for us, but we will deal with that as we come to it.

Mr. McCalden: As part of our strategy, there are a number of minor details that we purposely did not mention because we wanted you to get on with the business of getting the bill through.

Mr. Chairman: Before we move to the next group, members of the committee have had put in front of them the report on the Workers' Compensation Board that Merike did. There are no surprises in it, although you have not seen the introduction and the section on the royal commission. That is all: one page.

We would like to send this to get printed and back into the Legislature relatively quickly. Unless there is a problem--and I do not think there is, because there are no surprises here--can we put the onus on the members to get back to us in a day or so, otherwise we will go ahead? There is nothing complicated and no surprises. Otherwise we will not get it back into the Legislature.

Mr. Pierce: Mr. Chairman, you said a day or so, which is Thursday or Friday. Would you suggest we get it back to you by Monday morning?

Mr. Chairman: That would be the latest, I would hope. The simple fact of sending it to the printers and getting even a very simple cover on it tends to take a while. The sooner you get it back the better. Why do we not say Monday?

Mr. Pierce: All right. We will try to get it all together by Monday noon at the very latest.

Mr. Chairman: If we do not hear from you by Monday--

Mr. Pierce: Do we meet on Monday?

Mr. Chairman: Yes, we do. That is a good idea.

Mr. Pierce: Shall we report by Monday at the outset of the committee meeting?

Mr. Chairman: On Monday we will make a decision as to whether or not it goes. This is the entire report, so it is not long.

Mr. Pierce: Do we have copies for members who are not here?

Mr. Chairman: Yes.

Mr. Pierce: With a note?

Mr. Chairman: This afternoon we have four groups to hear from, and there are votes in the chamber at 5:45 p.m. We must not tarry. With me is Mr. Hobbs, who is the Deputy Minister of Transportation and Communications.

1610

The next witness is Thomas Sommerville. Is Mr. Sommerville here now? You have a brief? Make yourself comfortable. Members have the brief from Mr. Sommerville. It looks like this. It is 301006.

Mr. Sommerville, welcome to the committee, and we look forward to your remarks.

T. J. SOMMERVILLE

Mr. Sommerville: Thank you, Mr. Chairman. I am glad to be here and I thank the committee for extending an invitation to me and other members of the public to attend before the committee in the very important work that it has.

As you have indicated, I did file a brief and it runs some 18 to 20 pages. It would not be my intention to read the brief, because as you have indicated, members have been supplied with copies. I would like to touch on some of the headings that are raised in the brief and perhaps some colloquy or interchange might be appropriate.

I might begin by saying that I feel a sense of déjà vu in appearing before this committee. I appeared before this committee in 1968, and on that occasion was retained to oppose legislation to deregulate the dump truck segment of the trucking industry. At that time I did not have much success. The whips were on and the government of the day saw fit to proceed with that deregulatory legislation at that time. I did not have the pleasure of being able to appear before the committee in 1975, when after criminal prosecutions and after dump trucks had been circling the Legislature, the government found it necessary to re-regulate the dump trucks.

I want to begin by saying that the legislation before you, both in terms of the trucking industry and indeed in relation to all those whose concern it is in the transportation of goods--that means shippers of goods, receivers of goods and consumers of goods, and that is all of us--the legislation that is before you is of very great importance and of course is the most important

piece of legislation in this field that I have ever witnessed in my short career. It is for this reason I have seen fit to prepare a brief and to place it before you.

This is an extremely important piece of legislation and I think it is important to put it in context and to realize at the opening that it is not a trucking reform piece of legislation. If there is any difference between the words "reform" and "revolution," this is a piece of revolutionary legislation and not a piece of reform legislation.

Basically, what I mean by this is that if it is a principle of the present regulatory regime that there be economic control of entry through a test of public necessity and convenience applied to those who would use the resources, the infrastructure supplied by the public, and if the legislation, as it does--I think the last group that was here made it very clear what it thought, and it certainly characterized the legislation as deregulatory legislation--that variation or change in the very heart of the rules that will govern or are proposed to govern the industry is revolutionary and not reform and not evolutionary in any sense that I can understand that term.

I must say too at the outset that if you look at the legislation that is before the committee now and look at it side by side with federal legislation, which is before another place, this legislation goes much further as a deregulatory machine than anything thought of in the United States; there, Jimmy Carter signed into law on July 1, 1980, the truck deregulation act of 1980, and that covered interstate commerce in the United States. But, as I believe the OTA representative pointed out to the committee on Monday, many of the states and an even higher proportion of those states that are important to traffic that is important to Ontario and Canada are not deregulated. And there are economic controls to entry when we think about Michigan, Indiana, New York, Texas--I do not think I can name all 43 of them.

The degree of deregulation that was imposed by the Motor Carrier Act of 1980 in the United States falls far short of the combined result, should the legislation before you be passed unamended and the legislation before the other place also be passed in the most recent form in which I have seen it.

I do not want to be out of order, but if there are questions as I go along, I am dealing topic by topic. Of that first little introduction, I suppose the heading you would use for it is that this deregulation is stronger than any deregulation in the United States at this time. If there are questions or comments on that topic, or if members of the committee or others have questions or comments about that, I would be pleased to deal with them as we go along. I think there are about a dozen separate topics in this brief.

Mr. Chairman: We have learned over the years on committee that if we do it that way we never get through. I think we had better stick to our guns and have you go through the report, and then if there are any questions we will deal with them then.

Mr. Sommerville: All right. May I indicate as well that a good deal of the material that appears in the brief before members of the committee is derivative in the sense that it is taken from some reported material. In the one case, there is a study of trucking deregulation in the United States by Ghislaine Blanchard. I am sure the committee's staff has that study and can make it available to committee members. I certainly hope they will avail themselves of the opportunity to review that, because I hope the committee would want to see what has happened in other jurisdictions before jumping into the dark in this jurisdiction.

Another study cited in some detail in the brief I have submitted is one that was done as a result of an investigation by the California Public Utilities Commission. Sometimes you have heard people refer to that as the Baker report because that CPUC report was reported by a lawyer by the name of Daniel Baker on behalf of California to the United States House of Representatives.

Perhaps in dealing with the substance I could touch first on the question of employment and what the result of deregulation in the United States has been on employment there and what can be expected in terms of employment here.

All the available data confirm that employment in the trucking industry in Ontario would decline following deregulation. In the United States, as shown in the Blanchard report, the long-term layoff rate among motor carrier employees was about 30 per cent in 1984. The short-term layoff rate, excluding those carriers who went out of business or ceased operations--there were many of them and I will deal with them later--was 19 per cent in the same year.

One can predict that the experience in Ontario would be even worse, because the industry in Ontario is very competitive now, and we have seen the intrusion of US carriers already in the past five years.

I was very interested in the last group; I feel a little shrunken following that large body of men which went before me. I was interested in their reference to the changes in the industry in the past five years. That may be something you will want to think about and those who report to you will want to think about, because I think there have been major changes and they have been changes in the direction of reform in the industry in Ontario.

1620

You will remember the spokesman said the trucking industry now is not the same as it was five years ago. That is certainly true. Under a different government you had what was called a Public Trucking Act, not very dissimilar to the Truck Transportation Act that is before the committee now. That bill had as its impetus, and as perhaps some of the ideological framework within which it was conceived, conditions that existed five years ago and more and that do not exist today.

In passing over that point, and I am perhaps straying from employment as a main point in this area, I hope that members of the committee, if they have not, will read some decisions of the present Ontario Highway Transport Board before making a decision on the general principle that I am talking about here this afternoon. It is a good board.

I hope that members of the committee will ask themselves whether they want a trucking industry in this province to be conducted outside the kinds of principles that have been enunciated by that board in some of its recent decisions. I am thinking of decisions like the Franks case, the Regent case and others, where the board has shown, I think, a fairly deep understanding of what is going on out there and which also demonstrate--and Ms. Hart probably has more experience than any of us in this regard--that the board over the past five years has changed and that the conditions that led to the PTA and perhaps the ideological and some of the nuisance thoughts that were part of the rationale for the PTA, the predecessor bill, are long gone. You are solving problems here in this bill that do not exist any more.

If I could turn to wage levels, apart from the question of employment levels for those who do not have jobs any more, in terms of wage levels there are some very interesting figures cited, again, in Blanchard: In 1982, trucking employees experienced wage increases of only 1.5 per cent compared with increases in wages over the economy generally of six per cent. In 1983, the gap is smaller: 1.8 per cent for the trucking industry compared with 5.3 per cent for industry generally.

Another interesting sidelight, on the question of those who do the work, is the impact of this kind of legislation. Remember, I come back to the first point I made that what is proposed here is a deregulation that cuts much deeper than anything in the United States because it will be both provincial and federal rather than being merely federal as it was in the United States.

In terms of organized labour as a percentage of total trucking employees in the United States, the unionized sector contracted significantly. In California, and this is in accordance with the California report that I cited before, the CPUC investigation and report showed--this is pre-deregulation--that while, in 1980, there were 33.5 per cent more union employees than nonunion employees in the motor carrier industry, the superior numbers of the union work force shrank to a mere 3.9 per cent greater than nonunion employees in 1984. Between 1980 and 1984, from 33.5 per cent more union employees, it shrank to 3.9 per cent.

In other words, not only was there a decline in employment but also a much smaller segment of the persons employed in the industry was organized--members of bargaining units of one sort or another.

Mr. Pouliot: Appalling statistics.

Mr. Chairman: Stop interrupting the witness, Mr. Pouliot.

Mr. Sommerville: I will not say it is appalling, but you are going to hear later on where the burden really fell. I am not here to hold a brief for the trade unions or for any other segment, but what did happen as part of that was that a lot of people got thrown to the wolves, and they turned out to be owner-operators without safety nets. The people who pay in the long run are society as a whole, because what happened was that people who had benefit programs, pension plans and medical plans as part of union contracts, and often outside union contracts, all of a sudden became owner-operators and bookers without those privately funded safety nets. When they went broke as a result of noncompetitive pricing, the price was paid, not by the unions and the employers but by society as a whole, because the organized safety net disappeared.

Mr. Chairman: Mr. Pouliot--just as a warning for all members--if we start interjecting, Mr. Sommerville, who has half an hour, is not going to be able to finish his presentation. We have two other groups to hear from and we have to be done shortly after 5:30 p.m. I am trying to protect you, Mr. Sommerville.

Mr. Sommerville: Do you mean I just get five more minutes?

Mr. Pouliot: My apologies.

Mr. Chairman: A little more.

Mr. Sommerville: A little more than five minutes. I may have to talk to Mr. Robert and see if he will co-operate with me.

Mr. Chairman: Yes. I am worried not having enough time for exchanges with you too, so go ahead.

Mr. Sommerville: We will leave organized labour there and we will talk about abusive owner-operators. This is something we know about in Ontario. It is certainly something that happened with, in my respectful view, dramatic effect in the United States.

What happened, of course, was that the truckers and the private carriers--and I am talking not just about licensed carrier companies but about companies that ran trucks--became quite prepared to fight rate wars to the last drop of the owner-operators' or the brokers' blood. There were situations, and there are situations now, in which traffic is being moved at less than cost, because the broker is being paid on a percentage of revenue or on a mileage basis that does not pay the cost.

The fact of the matter is, you have got trucks moving at revenues to the broker that do not pay the cost and you have got brokers going broke and bankrupt. My gosh, if you look at--and I know members of the committee are perhaps, like I am, more used to looking at the Ontario Gazette than at the Canada Gazette--the bankruptcies in the Canada Gazette, it will strike you the number of occupational designations that are self-employed trucker. These, of course, are the owner-operators. These are the people going broke. These are the people being sacrificed.

It came to a head first in the United States and it is happening in this province right now. When you drive down Highway 401 headed for Kingston or Belleville and you see the shards of the tires on the road, these are the people whose shards of tires those are. These are the people who cannot afford to maintain their trucks. These are the people who cannot afford to keep to any kind of reasonable hours of work schedule.

Make no mistake about it--and I am departing from the order of the brief here--safety is an economic history. Let no member of this committee think this government is going to impose safety through the application of a police or inspectorate power. It is not going to happen. Let me tell you why.

If a carrier is in a situation where the price of his service for competitive reasons is down or is cut, where is his room to manoeuvre? Fuel? No, he does not control the price of fuel. Interest charges? No, he cannot control the interest he must pay on the capital equipment he operates. Wages? Generally speaking, no; there is some flexibility--of course there are union rates, there are some companies that are not union, and there are some small organizations that are able to get labour at lower cost--but it is a competitive marketplace out there for truck drivers. They cannot cut many corners on wage rates and still get people that you and I want driving trucks on the roads, when our wives and kids are on those same roads.

1630

So what does he cut? He has to cut maintenance. He has to cut preventive maintenance. He has to cut work rules so that drivers are driving too many hours. Do you think you can stop that with police? The other day, somebody asked, "How many inspectors do you think we need?" You cannot hire enough inspectors to make it safe. Safety will only come when there is an impetus from within the operator himself, where there is a will on his part, and a rewarded will, to operate his fleet safely.

All the inspectors in the world can check the brakes of all the vehicles that are on the highway--the point system or the CVOR system. You know what happens. Fine is one possible mandate. You and I both know that for a small carrier, a \$10,000 fine is a death sentence. For a larger operator, it can be handled within the normal range of costs of doing business as what some people have called "another licence fee." You have a problem in any equitable system of fines. That problem exists in criminal law as well, of course.

What is your next sanction? Suspend them or cancel them--put them off the road. That is all very well if you have a mom and pop operation. It is all very well if you are talking about two or three people taking a two-week holiday to make them pull their socks up. When a board or an administrator looks at a situation where, because of safety violations or because of authority violations or other violations, the administrator is faced with the problem of dumping 150 employees or 250 employees out on the street, once again the making of a decision of that kind is very difficult for that tribunal or that administrator. Of course, what happens is a waffle, and what happens is a reluctance to administer that death penalty. It comes right back to this: If you have a board that does have disciplinary powers as a day-to-day ongoing override on the carriers that it administers, then you have a hope.

I have clients who, with all the goodwill in the world, try to keep their fleets as safe as any fleet can be in North America. Yet they know--and people in this room know--that there are going to be occasions when they are going to slip up. If they are going to slip up, with all the goodwill in the world, can you really say that a CVOR or a national safety program, representing as it does an external police force, is going to do the job? Whatever other step you take, please do not let the committee confuse itself and think that safety is anything other than an economic issue.

Another section in my brief--and I will be very quick and just touch on these as I go through; I do hope members will read it--deals with stability in the industry. There is no question that in the United States the deregulation that took place had the effect of imposing business chaos on the trucking industry in the United States. I will not take the time to cite those portions of the reports which show that. There were enormous revenue losses. There were enormous numbers of people put out of work. There were numerous old and respectable businesses dumped out on the street for no good reason, certainly no good reason in Ontario and certainly not after the five years we have had in which regulation in this province has brought itself in line with modern business thinking and modern business practices.

Concentration, of course, we have already seen, with pre-emptive deregulation, and some of it is happening right now. We see more and more acquisitions, big companies swallowing smaller ones. I think there was an announcement--if there was not an announcement already there soon will be an announcement--of another major acquisition by the TNT group of companies.

We have seen already the big getting bigger. That is consistent with what happened in 1979 in the United States. There were actions taken by both the Interstate Commerce Commission and by carriers that pre-empted the Motor Carrier Act of 1980 with results that, as they continued after 1980, led to more concentration in the United States.

When you read the brief, if you have not already, you will be shocked and alarmed at the extent to which concentration in the United States has gone on. Some of the members already know the extent to which that trend has begun here--unless this committee stops it.

Service to smaller communities: I know there are members here from northern Ontario, and it is not just northern Ontario that has a problem in service to smaller communities.

When a new applicant comes in, if he is not tested--and he does not come in with a pledge and does not have a common-carrier obligation; that goes way back to common law in transportation law--he comes in for the lucrative traffic. That is what his business plan is based on. He wants his revenue to come from the lucrative traffic on the dense lanes. That carrier, of course, by creaming those lanes, forces the carrier who is trying to provide a service to the smaller centres out of that smaller-centre service. The result is, instead of daily service to a small point, you get three-times-a-week service.

We have seen some of that happen already as a result of some grants of authority in actions by the transport board that have presaged deregulatory attitude.

Mr. Chairman: Mr. Sommerville, I wonder if I can give us some time to have an exchange with you now, because I know members have indicated an interest.

Mr. Sommerville: I am in your hands.

Mr. Chairman: One of our problems is that we have a group from Algoma-Manitoulin, accompanied by John Lane, coming later. They have come down from northern Ontario to make a presentation. We do not want to cut them short, even by a minute.

Mr. Sommerville: I know the gentleman, sir, and I sure would not want to cut him short.

Mr. Chairman: No, I would not want to either.

Mr. Sommerville: At the risk of life and limb.

Mr. Chairman: Right. I wonder if we could have an exchange with Mr. Sommerville now. Mr. Pouliot, you had a question.

Mr. Pouliot: Yes. A few brief words, Mr. Sommerville. You are so right, Mr. Chairman. It is nice to be able to listen to an expert at work who deals with the real issues in the real world and does not concentrate on the hype that we shall have deregulation at all costs. I have a few questions.

Given your vast experience, Mr. Sommerville, and you have broadly summarized your views of the competitive market in trucking as it now exists in Ontario, do you find the system quite competitive?

Mr. Sommerville: Highly competitive. I would say cut-throat competitive. There are lanes in this province and lanes between Toronto and Montreal in which competition is already at a level that is under cost.

Mr. Pouliot: Would I be right or wrong if I were to state that deregulation would solve a problem that really does not exist?

Mr. Sommerville: I am going to take three minutes to answer that question. I think the animus or spirit that led to the Public Trucking Act of five years ago came from a couple of routes. One was an ideological spillover from the United States, shared in by some economists in this country, that

deregulation generally was a good idea in transportation. I think we had some problems in Ontario in that excess did happen. I think of the UPS case; a lot of people had a bad taste in their mouths from the UPS case. Those problems are over. They have been over for years.

You asked me the question first. We have in place right now a trucking system that is highly cut-throat, highly competitive, highly efficient and highly service-oriented. It is one in which entry is relatively open. You cannot walk in, but anyone who is determined to obtain a licence within a scope that he can service will get it. There is no real insurmountable barrier to entry in place today.

Mr. Chairman: I wonder, Mr. Pouliot, if we could--

Mr. Pouliot: One last question.

Mr. Chairman: All right. Then we will go quickly.

1640

Mr. Pouliot: Given the fact that deregulation--hypothetically, that is--that the proposed law is intended to create more competition, in your opinion, Mr. Sommerville, should deregulation take place, would there be more trucking firms or less trucking firms?

Mr. Sommerville: There would be fewer trucking firms, more gypsies, and more brokers going broke--certainly no more competition.

Mr. Gregory: It is odd that you should mention that there would be more gypsies. I seem to recall that back in 1976 we took certain actions, as a result of a report at that time, to eliminate the gypsies. I think it was quite effective at the time, but lo and behold, we are back with them again.

Mr. Sommerville: I do not think it was effective.

Mr. Gregory: It was intended to be effective and certainly should have been; but obviously it was not because we still have the same problem.

Mr. Sommerville: I had a great deal of respect for the animus behind the legislation of which you speak, but it did not work. It really did not work. You talk about the probationary--

Mr. Gregory: Obviously, it did not work. We are hearing the same thing again, that there are going to be more gypsies if we have deregulation. I cannot see that there are going to be, because we have the same problem. As you said, it did not work, so we did not get rid of them anyway. If we are going to have more with deregulation, I do not know how it is going to happen.

Mr. Sommerville: I need more time. I would like to sit down and talk to you about that and I need more time to explain what happened.

Mr. Gregory: I would like that too.

How do you rationalize the increase in unemployment now? It seems to me a truck is a truck and a driver is a driver. Notwithstanding where the employees come from, are you telling me there will be less employees and therefore there will be less trucks?

Mr. Sommerville: No. Likely there will be more trucks. There will be less employees because they will be owner-operators or they will not be identified as being in the trucking industry because they will be in private carriage or working for load brokers or other forms of economic organization.

Mr. Gregory: Whether they are owner-operators or whether they are employees of a trucking firm, does that really matter as long as the man is working?

Mr. Sommerville: It matters a great deal.

Mr. Gregory: To whom?

Mr. Sommerville: To the man, to the customer and to the people who have to use the highway with him.

Mr. Gregory: You mean a driver would rather be an employee of a large trucking company than an owner-operator himself?

Mr. Sommerville: I cannot speak for the driver. I think there are some very strong reasons to hope that there will always be employee drivers responsible to trucking employers on the highway, with the benefits and with the controls--logbooks on safety and on maintenance. I would hope that would always exist, because I think that is a safety measure for your family and mine when we are on the highway. As I said, you see the carcasses of tires on Highway 401, and those are owner-operator carcasses.

Mr. Gregory: So what you are saying is, if these bills are passed, it would be very necessary to have proper safety features within them, adequate safety features.

Mr. Sommerville: I am saying that you cannot do it. Somebody asked the other day how many more inspectors you would need.

Mr. Gregory: I think I asked that.

Mr. Sommerville: You are never going to get enough.

Mr. Gregory: If you are saying you cannot do it, how is it that the Ontario Trucking Association, which I suppose represents more trucking organizations than any other--I do not think there is another--endorses these bills in principle?

Mr. Sommerville: An organization such as that has an executive and a membership. Compromise is part of the business of working with an association like that. They are wrong.

Mr. Gregory: Are you saying the OTA is not properly representing its membership?

Mr. Sommerville: No.

Mr. Gregory: Okay. In other words, you do not have an explanation as to why it would be endorsing these bills in principle.

Mr. Sommerville: The question here was asked about the position of the OTA and why it changed a year ago. It did not change a year ago. What they did was, they felt that they had an inevitable hurricane on their hands in

deregulation. Over many years, three, four or five years, they decided to tack their sails to meet the hurricane rather than to forthrightly oppose it. That is what you saw on Monday, a compromise on a compromise. Certainly, more than two years ago, government was not listening to those who speak as I do. The OTA felt--I am speculating on what they felt; I am not the OTA--that if they were going to have any meaningful input, they had better play the game.

Mr. Chairman: I do not like to keep intervening, but I am getting nervous about the time, Mr. Gregory. I know you have not had much time--I am not complaining about that--but I am worried about the next two people.

Mr. Gregory: I just have one short question. I do not want you to misunderstand the question I am going to ask, Mr. Sommerville. Are you classed as a transportation lawyer?

Mr. Sommerville: Yes.

Mr. Gregory: Do you represent trucking firms before the Ontario Highway Transport Board?

Mr. Sommerville: Yes.

Mr. Gregory: In the event of the implementation of these bills, it would drastically change the function of the OHTB, which would drastically change your function.

Mr. Sommerville: Yes, I would be much busier.

Mr. Gregory: In what respect?

Mr. Sommerville: If the bill goes through as is your intent, there is a five-year period--I am 51 years old--in which there is a market test or a public interest test, and after that, a fitness test.

Let me give you an example. A couple of years ago, they brought in a rewrite project, which was in itself deregulatory. I do not know if that has been explained to members of the committee or not, but it had deregulatory elements in it as well; I have been so darn busy with those things, working evenings and weekends to try to keep up. When we get into market tests, public interest tests, fitness tests, willingness tests and ability tests, I--

Mr. Gregory: I am thinking, Mr. Sommerville, in terms of--

Mr. Sommerville: If you think I am here because I think I am going to be out of a business if you pass this, you are wrong.

Mr. Gregory: I think you will be to a degree, because there will not be the same need to prove necessity in the marketplace.

Mr. Chairman: We do not impute motives in this building.

Mr. Gregory: I am certainly not doing that. I was very careful to make that very clear--

Mr. Sommerville: I am not a job applicant, sir.

Mr. Gregory: I am sympathizing with you--

Mr. Sommerville: Please do not.

Mr. Gregory: --because I can see that your function is going to reduce a bit, and I just wondered what your views were on that.

Mr. Sommerville: My views on that, sir, are please do not waste that sympathy.

Mr. Gregory: Sympathy is never wasted on anybody.

Mr. Chairman: Ms. Hart has a question.

Ms. Hart: I would love to debate with you on some of these things, but in the interest of time, I will limit myself to three.

One issue is cross-subsidization. You make the sweeping statement that trucking operations subsidize delivery to out-of-the-way places and pickups by cream traffic to bigger centres. In my experience at the board, I have heard the board ask for this information, this data, and I have never seen it. Do you have a study that shows this?

Mr. Sommerville: I presented evidence that does show cross-subsidization in which traffic from large centres does subsidize traffic from smaller centres.

I think a better way of handling this problem is to note a dog that is not barking here. In the regulation of the bus business, it is a matter of policy that there be cross-subsidization--cross-subsidization being effected through a regulatory scheme in which charter operations are said to cross-subsidize line-haul operations between less densely populated centres. It works pretty well. That is a form of cross-subsidization in the bus business. No one, not the government, not even the fellows who were behind the earlier version of the Truck Transportation Act, came forward with a bill to interfere with the cross-subsidization that occurs in the bus business.

The answer to your question is that I do not have facts and figures in my vest pocket about cross-subsidization. I have led evidence of cross-subsidization of small centres by the traffic and density between larger centres. I am sure I can name more than one carrier who does cross-subsidization of small centres every day of his working life--I am pointing at him over there in the corner. If that is not a satisfactory answer, I wish I had the numbers for you.

Ms. Hart: Would you agree with me that the industry in Ontario does not have any data to support that contention; that there has been no systematic study to substantiate that?

Mr. Sommerville: Yes. I think it is a scandal--there are two scandals here--

Ms. Hart: Thank you, Mr. Chairman.

1650

Mr. Sommerville: Mr. Chairman, if I can finish the answer to that question, there are two scandals. Scandal number one is that the industry has no data to support that statement. I wish we had and I wish the association did more about that. I cannot do that. I am a sole practitioner.

It is a little scandalous too that I have to resort to coming with reports about California, Wisconsin and places in the United States. I would have hoped that before you take this great leap into the unknown of deregulation, officials of the ministry and perhaps your own staff would be in a position to supply you with stuff that did relate specifically to some of the impact this thing might have on our problems.

Mr. Chairman: As a matter of fact, it is funny that you would say that. I too wish that we had time. I would love to have had a month or two to look into the matter more fully.

Mr. Sommerville: I hear you closing me off and there is one thing I really want to say before I finish.

Mr. Chairman: Thank you.

Mr. Sommerville: Is that in order?

Mr. Chairman: Yes, go ahead.

Mr. Sommerville: Okay. This is a free trade issue too. I have mentioned that in my brief, and I am saying to you most forcefully that if you give away the regulatory power that you have here to use the people's infrastructure, the people's paid-for roads and bridges, if you give that away without a quid pro quo, then you are disarming our negotiators at that table.

I want to tell you--most members of the committee will not know this--that we have already had, in this province, the government of the United States intervene directly in a trucking case in a matter that came before the cabinet by way of appeal from the Ontario Highway Transport Board, and it did two things.

Mr. Chairman: Is that the one you referred to in your brief?

Mr. Sommerville: That is right. I cited that. I have available to you, and can distribute by June 18, copies of the diplomatic note in which the government of the United States dares to say to this committee and to this government that perhaps you should be considering deregulation.

I have emotional views about that. The committee will, of course, have its own views and emotions.

Mr. Chairman: Thank you, Mr. Sommerville. I do wish we had more time, but it was a case of restricting time or not hearing from people. It was as simple as that if we wanted this bill to be--

Mr. Sommerville: I am not complaining, sir. I have had a fair hearing

Mr. Chairman: Okay, just so members understand that is why we are being fairly tough on the time allocation. Otherwise we would not be able to hear from everyone.

Mr. Sommerville: Thank you, Mr. Chairman, and members of the committee.

Mr. Chairman: Thank you, Mr. Sommerville. The next presentation is from Claude Robert. Mr. Robert has an oral presentation, I believe, not a

written one, and I think he has a sense of the time constraint we are under because we did want to hear from Manitoulin Transport Inc. by 5:15 p.m.

CLAUDE ROBERT

Mr. Robert: My name is Claude Robert. I am with a company called Robert Transport 1973 Ltd. from Rougemont, Quebec. Our organization is a family-owned company. We employ approximately 1,000 employees in the trucking business. We run approximately 2,000 pieces of equipment. We have 12 terminals, two in Ontario and 10 in the province of Quebec. Our sales are approximately 30 per cent intra-Quebec, 10 per cent intra-Ontario, 40 per cent extraprovincial and 20 per cent international.

The reason why we asked to be able to express ourselves in front of this committee, as we have done through the federal committee at the time as well as we did in the province of Quebec, is that in the name of my employees and in my name we do insist to make representation to this committee and to express our concern versus the possibilities of deregulation, the way it is spelled out in this bill.

I have not made any submission in writing, but I feel I could cover up, in overall, and I would be more than willing, being an operator myself, to answer any of your questions. I think you like to hear from the field, and I am a fielder.

For me, deregulation is at three various levels: intraprovincial, extraprovincial and international. When people say it is not of great concern because there are three different elements, I say it is not true, because once you are a regional carrier, you need all the freight in and out of that region to complete your routes, whether it is less than truckload in, truckload out or truckload going long distance, like extraprovincial, as well as international.

When you are an original carrier, as we are in Quebec and also in part of Ontario, you need the freight in and out. When Mr. Sommerville was unable to answer the member for York East (Ms. Hart) in respect of creaming out the market, we know what it means in regions, what creaming out the market is. It is too easy for truckload operators to come and get truckloads away from you when you need that truckload to balance your local operation. This is what we call creaming out. This is happening every day.

More and more, you see these operators coming from the United States or from all over the place at very low cost, being able to drive a lot of empty miles to come into your region and pick up a lot of your truckloads. What do you do? Do you send your drivers home or do you take a chance and send them to the major city to go and get the LTLs to supply your customers in the regions back home? That is the big dilemma now that we have to answer every day and that people must be concerned about.

Another thing we must be careful about is that a lot of people are talking about deregulation in all aspects. To me, you cannot apply the same rules of deregulation to airlines, railways, trucking, navigation, taxis and buses; they are a lot of different animals.

One of the reasons deregulation in trucking is so important is the easy access. Anybody who wants to be a trucker can become a trucker. If any one of you wants to be a trucker tomorrow morning, I will just give you a few tips. I could get you a truck within six or seven hours. If you call that being a

businessman and start a business by doing so, I challenge any one of you to come and appreciate the problems. That is how we live today.

When people claim we have to be professional, we have to think safety, we have to think about prevention and all these things, I do not believe it, because getting a driver's licence today is like nothing. You get the driver's licence, you drive a car with standard shift. You could drive a special test. You get your licence and you see a guy showing up at your place to apply for a job. He is a qualified driver, so he has a rig of \$110,000 and he cannot even pin his tractor on the trailer himself. That is what deregulation is right now; not yesterday, but right now. Imagine tomorrow. I do not know what you could imagine. I see it. I am an owner and I can appreciate it on a daily basis.

One of the things we believe is the result of deregulation and what we experience today is that things will change. But when you see easy access, low rates of interest, a surplus of new trucks on the hands of the major manufacturers and a lack of employment being offered by the regular route carriers, all this is creating a situation where people who want to drive trucks today have no choice, because they cannot go and apply to the largest truckers. In fact, they go and buy themselves a truck, because they know the major companies are not hiring drivers simply because their competitiveness does not permit them to put more drivers on the road. They have to go the alternative way, which is the owner-operators.

If these people want to become truck drivers, they have no choice today. They have to go and buy themselves a truck and become one extra owner-operator on the road. All that is on account of ease in the marketplace. This is one of the results of what I will call absolute deregulation for the time being.

I am also concerned when we talk about deregulation, because I do not believe in the word "deregulation." Why do we have people in chambers if we are talking deregulation? What are all of you doing, if not regulating? There is not a day or a month when there is not a new law coming up. If we were talking deregulation, we would just put one up and say, "No more regulation," and forget about it. That is not the case.

Whenever somebody deregulates, it is because they want to regulate more later. That is a rule. Nobody could tell me anything different. To me, it is just a process people are using right now, maybe to please certain pressure groups; but sooner or later, they will have to come back with more regulation to correct these problems. It is a matter of time. I hope I am not old enough to see the change. I certainly have comments to myself when I hear the shippers' group say, "We want deregulation right away." What are they complaining about? They already have it.

1700

What we are concerned about is the same concern you have with respect to safety and with respect to the future of our industry. Our industry can have a future only as long as we are able to show profitability and profit in the bottom line. This is the difficulty right now for our industry. Anybody who is able to claim our industry is healthy and wealthy has all kinds of reasons to believe deregulation should be done because there is an abuse by the carriers in the amount of money they charge. I do not think it is the case, and nobody could claim that people are overcharging or offering service at a much higher price than they should. It is the reverse.

Everybody who is on rates is talking about cutting rates. Even the shippers said: "Yes, we are concerned about the quality of service. We want to make sure we have trucks that are well built and well maintained so that we can provide the service on time." Already there are concerns about the quality of service, which goes against the idea that the rates are too high. I certainly do not share their position, nor do I endorse the position of the Ontario Trucking Association, because the OTA's decision to go and say, "We will support the project," was for me like dropping the handkerchief. It is a choice they have made. I am not one of those.

I will keep fighting. One day, when the people say, "It is time for deregulation, Robert," I will accept it, but in the meantime, I have already been working for 23 years in the trucking industry and I believe in it. Otherwise, I would not be here. If you believe in something, you take the time and you go and give evidence about it. I think I could bring a lot of my employees who would be very concerned and would support me on that ground.

When we talk about employment, as Mr. Gregory mentioned before, one of the good things about it must be mentioned. I have a small anecdote to tell you about it. One day I was at a customer's and he told me: "Look, it is much cheaper to use this carrier here"--the owner-operator type or what we call the pseudo-leasing type--"because in reality, his rates are less than yours." I said: "Well, it is understandable. I have drivers with 10 and 15 years' experience." "Well," he said, "it's your problem."

How do you like an answer like that? Does it mean that all the enterprises in the trucking industry in Canada should start to lay off all their employees and start with new employees so that they could save on benefits? Is it a good social approach? I wish I could tell my employees, "Guys, come on, all of you give me your resignations." Starting tomorrow, I could start with new employees, no six weeks of vacation time, no fringe benefits, no pension plan and none of that. Is it the way it should be?

We are just waiting, because the day it does happen it means that you give the green light to all the corporations to say: "Fine. Lay off all your people and start fresh with new people. It is going to be much cheaper, and that way the shippers could ship at lower prices." That is very interesting, but you have to defend that in front of my 1,000 employees. I could tell you different right away. That is not what they feel.

I do not have to talk to you about the squeeze that is being put right now on the industries, particularly our trucking industry. This I think I have covered.

One last thing I would like to say is that I myself made a survey and I made a presentation at the CITL a year and a half ago. An opportunity was given to me to test whether or not it was true that our rates in Canada were even more competitive than on the US side. I made an analysis of steel moving from Pittsburgh to Chicago, which would be about the same thing as steel moving from Hamilton to Montreal--distance-wise, product-wise, city-wise, two major cities, two major cities in Canada and similar things.

We found out our cost per ton per mile in Canada was approximately 65 per cent of what it was in the United States, which is the proof that the Canadian trucking industry has used to the fullest the possibilities of the weights and measures laws and everything and that we are in what I would call a very competitive market. That figure was quite significant to me and to a lot of people I told about it. The claim that on the United States side they

get the advantage of much more competitive rates and better economy on this and that--we had the proof it was not the case. Our industry, even in the regulated form we live with presently, is still more efficient than our counterpart on the US side.

To finish, I would just like to say, let us be very careful. You are people who are going to decide about the future of our enterprise, about the future of our investment and the future of our employees. I am very concerned for my employees, for myself, for my family and a few others. We know we do not have the strength to compete with the major US carriers. We know that; it is a fact.

I think there are not too many of you who would right now buy stock in trucking companies. If you would, I would like to know which one. Right now, if you look at the stock of trucking companies, those which have a good name and are doing very well are into garbage or buses. They only use the name of transport, because they are not in transport any more. What I am saying is that we must be very careful with the decision which is going to be taken.

To finish, the only recommendation I would like to make is that we, as they do in Europe, should consider putting a limit on the number of what we might call truck commodity plates to be issued. If we need 1,000 tractors or 10,000 tractors in Ontario and Quebec, let us limit it to 10,000 plates. Right now, it is a free-for-all, however many plates you want.

I think your ministry should be in a position to evaluate and estimate the number of tonnes. You have all the figures on hand to do it. Through your statistics, you know how many tonnes are to be carried during the year. You know how many plates have been put on. You could do the arithmetic and find out how many plates have carried everything during the year.

If you do that analysis over the past three or four years, you will see the number of plates growing and growing year after year, and the number of tonnes being carried growing less and less. It cannot be any different; it is because of the multiplication of trucks on the road.

Sooner or later, if the number of tonnes to be carried does not increase, we may have to stop putting plates on the road. Tonnage will be less and less, people will be less and less efficient, and you will see more and more bankruptcies.

That is a little of my message, in the the time given to me; I could have talked to you much more. If you have any questions, I would like to give a chance to my friend from Manitoulin Transport Inc., who I am sure could do a much better job.

Mr. Chairman: Thank you, Mr. Robert. We appreciate your self-discipline in time as well.

Mr. Gregory: I intend to exercise self-discipline too, Mr. Chairman. I just want you to know that.

Mr. Robert, I am a little confused by some of your statements. The one that really got me was that you said Canadian companies generally are operating at a rate that is approximately 65 per cent of the rate American truckers charge.

Mr. Robert: I said the rate per ton per mile was 65 per cent of the US rate.

Mr. Gregory: That being so, why would you make the statement that you would be afraid to compete with American trucking outfits, if you could operate for rates at 65 per cent of what they are?

Mr. Robert: That is because in Canada we make the best use of the equipment. As you know, in Toronto and Montreal, we use 80,000 pounds, whereas on the US side, they are not as efficient and use only 20 tons per truckload. They are not providing the same type of utilization of equipment.

What I am concerned about are the US carriers; these people already have the money, plus they have the network in place. Name any major carrier in Canada which has a network of terminals in the United States able to do LTL pickup in the United States. Even the largest Canadian ones have two, three or five terminals on the US side.

1710

Mr. Gregory: That is fine. That is an offer of additional service to a shipper, but I have to go back to the fact that if you are able to offer your service as a Quebec Canadian contractor to shippers at 65 per cent of the American rates, I am sure your competition would be an interesting one because you would probably get an awful lot of business in the United States.

Mr. Robert: No; because, you see, the type of equipment we run in Canada we cannot run in the United States. We know that Yellow, Roadway and people like this are not going to come and compete and buy quad-axle trailers to come and compete with Manitoulin up north or with Robert between Edmonton and Montreal, but what they are going to do is bring the LTL up to the north, or the LTL up to Montreal--

Mr. Gregory: The LTL being what? I am not a trucker.

Mr. Robert: The less-than-truckload shipments on their regular vans. They will move that from the United States or from the major cities in Canada into a major city like Montreal. Yes, they will sure find truckload rates which will accommodate them to go back and cream up our market to go back to the United States. In trucking, the triangle is the magic; so if you have an American coming with some LTL from Chicago into Toronto, he will fill up in Toronto to go to Montreal with some other LTL to increase his weight to Montreal.

When they arrive in Montreal, I doubt very much that they will look for a lot of LTL going to Toronto because they know that what is coming from Quebec, for example, is a lot of raw materials. So they will go and grab a truckload--a load of paper, a load of asbestos or whatever--to take back to Chicago. But the load that he is going to get is a load that he is going to cream off from us, because we do not have the network to beat them on the LTL.

Mr. Gregory: You use the name Yellow Transport.

Mr. Robert: Yes.

Mr. Gregory: Is Yellow Transport the company that was allowed to buy a Canadian company by a decision of the Ontario Highway Transport Board just recently?

Mr. Robert: Yes.

Mr. Gregory: So you still think that the regulation should remain, or we should still have the same system of dealing when the OHTB was able to award a licence to a company that you are afraid of competing with?

Mr. Robert: I do believe in the system, and I do have a great deal of trust in the board right now. If it has chosen to issue a licence to Yellow, I will respect this in the same way as when it chose to grant a licence to Robert. My company should have to respect that the board's decision has been the best one in the circumstances.

But when you say you are going to open up the doors, you open up the doors to the majors on the LTL--Yellow, Roadway and all the major companies--because, remember, what they call a major medium-large company in United States, over there our size as a company is considered very small. Once we say we are concerned about the majors, even the medium-sized companies are much larger than the largest Canadian corporation.

Mr. Gregory: I think I get your message. I have one very quick question that I want to get into while I have you here.

Mr. Robert: Yes.

Mr. Gregory: You are from Quebec. You run a Quebec operation, although you do operate in Ontario too.

Mr. Robert: That is correct.

Mr. Gregory: We did have a delegation from the Ontario Dump Truck Owners Association and one of their major complaints was that there are many dump truck operators that are vehicle licensed in Quebec, but they are not licensed to do business in Quebec and they operate within Ontario. I forget the percentages, but there was an awful lot of numbers who were operating in the Ottawa area and presumably taking jobs and contracts away from Ontario truckers. It is not a reciprocal arrangement.

Mr. Robert: That is right.

Mr. Gregory: Ontario truckers cannot take dump trucks into Quebec.

Mr. Robert: That is right.

Mr. Gregory: Do you see this as fair?

Mr. Robert: I do not think it is fair.

Mr. Gregory: What are we going to do about it?

Mr. Robert: I think you should clean up your things in Ontario, and it is urgent.

Mr. Gregory: How about an offer of reciprocity from Quebec itself?

Mr. Robert: You try to discuss this matter with a guy who is the dump industry. They already have enough problems in Quebec. They are fighting each other because they have got too many trucks.

Mr. Gregory: So you see the solution lying here in Ontario? There are two ways, are there not? Either there is a reciprocal arrangement between

Ontario and Quebec so that there is a two-way traffic, or Ontario is in the position of having to shut the border.

Mr. Robert: Yes.

Mr. Gregory: Do you see that as more favourable and more acceptable than having a reciprocal arrangement?

Mr. Robert: My feeling is that, yes, Ontario should shut the border to the Quebec guys in the same way Quebec is doing to the Ontario guys. For one reason, a lot of these dump people are working for government contracts, and if the government is not able to control its own business, it is a little foolish. That is the way I look at it.

Even if everybody is nationalist in his own way, I think you should try to protect the job in your family. I know that in Rougemont, people will start to give business to Robert before they start to give it to Franks coming from the United States. I do appreciate their support, and I think the people in Ottawa region or the Ottawa Valley should do the same with their own carriers. But again, they love competition. As you know, right now the business in western Quebec is very slow. There are no big projects. All these guys could work around Montreal, but they live in Ottawa or they live in Hull or they live in Gatineau and the business is very slow. So what do they do? They cut rates and go across the border and they can do it for less.

We have the same problems when we get the Americans coming and picking up our aluminum in Bécancour. I was explaining at lunch-time the Quebec government has invested more than \$1 billion to build a big plant in Bécancour to create 800 jobs. That is a very smart thing, but on the other hand, they did not protect the trucking area. They pull approximately 150 loads a week out of there, and 60 per cent of it is run by the Americans. It is a good opportunity that we lost.

Mr. Gregory: I do not think anybody would argue the point: Reciprocity in so far as free access to--at least, if you will not go as far as the United States, we should have some reciprocity, freedom of movement for trucks all across Canada from province to province. Then you are telling me that when it comes to dump trucks, we should be closing the border and bringing in the tanks.

Mr. Robert: You said that. I did not say that. If you start doing it like this, you will have to do it for chicken, you will have to do it for milk, you will have to do it for butter, you will have to do it for eggs, you will have to do it for everything. There is a lot of protection from one province to the other in that respect.

Mr. Gregory: If you want to talk about milk production, I am sure some of my farmer friends--

Mr. Robert: I am from a farm family, so I know a lot about that. I could talk about that.

Ms. Hart: I have just one question. You have indicated to this committee that we have deregulation now, perhaps not by that name. If that is the case, then why are you concerned about tomorrow, particularly with the increased emphasis on safety both in these bills and in the move towards the national safety code?

Mr. Robert: Would you not if you had seen your profits reducing year after year for the last five years and then you see the point where there is no more stretch in your balance sheet, so that sooner or later you will be forced to tell your people to go home and do something else or buy the truck?

For the last five or six years, the trucking companies have been what I call stretching their financial statements. Where they have reserves from before, they use the reserve. Their depreciation ratio has been reduced. Everything has been stretched to the limit. Now comes a time when you have to make a choice.

For myself, I am a truckload operator. Being a truckload operator, my competition today is what I call the owner-operator business and the independent business. I am operating with unionized drivers. Week after week, month after month, I keep telling these guys, "You have two choices. Either we accept having to freeze or reduce our salaries, or you have to buy the vehicles and become owner-operators. Otherwise, I have no more employment to offer you."

That is why I am concerned. If we do not do something now, probably in five years you will still be here, but I will not.

Ms. Hart: So that I understand your answer clearly, if we pass these bills, in your understanding it would just be more of the same.

Mr. Robert: It will increase it and the burden will be even worse.

Ms. Hart: That is what I want to know. How will it increase it?

Mr. Robert: Why will they increase it?

Ms. Hart: Yes.

Mr. Robert: By opening up the entries.

Ms. Hart: You said we have deregulation now.

Mr. Robert: Yes, but right now people are still very much concerned whether they get cut or not. The Americans are coming with open minds; they do not ask questions. They were told, "Go to Canada; no more problems." So they come. The French or the Ontario truckers, the owner-operators, the independents, every once in a while there is a razzia at the borders in Ontario here and there and they get caught, so they are afraid.

Now the people who finance them are also asking these people, "Hey, who do you work for?" If the guy said he is working for an independent, a freight broker, a freight agent or something like this, I am not too sure he is going to get a truck now, because they have been having so much repossession with these people they are now scared to finance these guys.

If the guy says he is working for whichever is the major one, someone may still accept to finance him. A lot of these people are working now for the majors, and these majors--Mr. Sommerville says, and I have used this expression many times in front of the board--they will go and offer rates up to the last drop of blood of the owner-operators. Not theirs, of the owner-operators. You should see the method of pricing of these guys. They do not price according to their cost. They price according to competition minus five or 10.

I am prepared to say that a lot of these people would come today and you would ask them, "Would you be able to prepare a cost analysis for your trucks moving between Toronto and Montreal," and they will say no. It is not proper in today's marketplace.

Mr. Chairman: Mr. Robert, I know you would not want Manitoulan Transport to come all the way down here and not have an opportunity to have an exchange with members of the committee. I should say that there are still members who would like to speak with you. I apologize for that, but there is not much we can do about it. I hope you will stay for the end of the day.

Mr. Robert: I will stay until the end; no problem. I will be more than happy to.

Mr. Chairman: Okay. Members can speak with you then. Thank you.

The next presentation is from Manitoulin Transport Inc. I think you gentlemen can see there is a lot of interest in this matter. We do wish we had more time, but we do not.

Mr. Lane, are you the solicitor for this company?

Mr. Lane: Not exactly. I am a member.

Mr. Chairman: Welcome, John. Do you want to introduce the group?

MANITOULIN TRANSPORT INC.

Mr. Lene: On my far right we have Wayne Cummings, the vice-president of Manitoulin Transport. In the centre we have Hugh Morris, who is a lawyer and a man of many other talents. On my immediate right is Mr. Smith, who is the president and the owner of the company.

Mr. Chairman: Welcome to the committee, gentlemen. We look forward to your presentation. Who is going to be presenting the brief?

Mr. Smith: I will. I will not bore you by reading my brief. You have it before you and I would really appreciate it if you would read it.

I would like to talk about five main points in the brief. First, briefly about our company, Manitoulin Transport, we have been in business on Manitoulin Island now for 30 years. We have gradually expanded our area of service primarily as a less-than-truckload carrier, I suppose. About 60 per cent of our haulage is package freight, 40 per cent truckload.

We are truly a northern carrier. We service as far north as Kapuskasing and Hearst, west to Sault Ste. Marie, east to Pembroke-Ottawa, south to Hamilton-Toronto. We have 14 northern terminals and four repair garages in the north. Our head office is at Gore Bay on Manitoulin Island. We have about 80 people in the head office there and another 11 in other parts of the island.

We provide an overnight service between all points in our system. The LTL freight moves primarily from south to north and between points in the north, and we return to southern Ontario with heavier loads of resource industry goods.

We provide employment for 375 people in northern Ontario. We are committed to the north. We service small and large communities alike; small and large shippers alike.

We are concerned about the new Truck Transportation Act and the deregulatory nature of the bill. I believe the potential impact has been underestimated. We understand there will be very few public interest hearings and Ministry of Transportation and Communications staff may well handle the applications and issue decisions.

The existing system, under the Ontario Highway Transport Board, which has a great deal of knowledge and expertise, has been able to screen out a lot of the bad operators. It does not let them enter the marketplace, and certainly this is in the best interests of the general public. We see a flood of new applications.

The minister has said there is a lack of competition in northern Ontario. We certainly do not agree. Since 1980, 10 of our major competitors in the LTL business have all had financial problems and have had to reduce or withdraw their services or sell out. Most have sold. We financed under new ownership and are still competing.

There certainly has been a great overcapacity and there continues to be an overcapacity of carriers in northern Ontario.

Rates have been brought up. I have recently done a study in which rates to northern Ontario from Toronto and within the north are approximately 14.8 per cent less than in southern Ontario, considering equal miles.

Safety: In my opinion, no amount of safety legislation will replace the safety standards of a well-established, profitable company with driver training, proper maintenance and company-enforced safety standards. We have a lot of two-lane highways in northern Ontario, and I am certainly concerned about road safety.

Mr. Chairman: That may all change, though. They are building highways all across the north.

Mr. Smith: I hope so.

Mr. Gregory: All \$26-million worth.

Mr. Smith: I would like to describe the delicate less-than-truckload infrastructure of northern Ontario. In the north in the last 25 years, a lot of new manufacturing and distributing has occurred in resource-based materials. Also, there is a great dependence on northern supply, versus years ago when most of the products came out of southern Ontario.

We have quite a network in place. The freight moving between points in northern Ontario is very important to people of the north; small amounts of freight over large distances. LTL freight moving from north to south moves in very small quantities. Most of it is heavy truckload. Even in the LTL freight moving from southern Ontario to northern Ontario, there is good volume on the major points, but certainly low volumes to certain terminal areas. For instance, our Hearst terminal area would get approximately a third of a load a night; Kapuskasing, half a load; Blind River, a third of a load; Gore Bay and Little Current, each a quarter of a load. This is a heavy movement of LTL that we are talking about.

We have terminals in place in which we have invested approximately \$5 million. Both Sudbury and North Bay are hubs for the north. In Sudbury, we have a warehouse and garage facility worth about \$2.4 million. We have high

fixed costs in terminals and communications in the north. These facilities have been set up to accommodate today's volumes for our northern customers. We must have that volume of revenue to maintain the fixed overhead costs that we have connected with those terminals. Erosion of these revenues would destroy what we describe as network density. An erosion in revenue will increase the cost per hundredweight to move the goods for us, and this will result in our being unable to maintain our present level of service.

What are the alternatives for us? I think if the going gets rough, it only makes sense that in order to protect our equity and our assets, we would get out and sell. We have 375 people in northern Ontario. We have looked at how many of those people would lose their jobs in the north if we were purchased, for instance, by a large Canadian carrier or an American carrier.

I have the figures in my brief. From the island, for instance, we would lose 91 jobs. From Sudbury, we would lose about 67 jobs; from other points, 18. In total, of those 375 jobs, I think we would lose 176 jobs out of northern Ontario. Those jobs would be office jobs out of our head office, which would certainly go to Toronto or points south. Our four garage facilities, Sudbury being the major one, would likely be done in a facility here in Toronto. Certainly, a lot of our highway drivers, rather than working out of the hubs at Sudbury and North Bay, would work out of Toronto.

I certainly do not look forward to the day, if that should occur, when I have to tell our employees we are selling out and we could not make it go in a deregulated environment. I certainly do not think I could live in Gore Bay if that did occur. So I would ask your committee to seriously consider our concerns before making your recommendations. Thank you very much.

1730

Mr. Chairman: Thank you, Mr. Smith. Some of the members have indicated an interest.

Mr. Gregory: I will be very short. Mr. Smith, I read your brochure as quickly as I could. I note that one of your grave concerns is safety, which generally parallels the recommendations of the Ontario Trucking Association. Apart from that, your brief generally is counter to what their recommendations are and what their position would be. Could you please help me understand this? I assume you are a member of the OTA.

Mr. Smith: Yes, we are a member.

Mr. Gregory: I realize that in any organization, we do not always speak with one common voice. In other words, we might have a position, but not necessarily everybody always agrees with that. As a member of a caucus, I sometimes am in that same position; frequently, as a matter of fact. Could you help me? Why? Are you telling me you do not really adopt the OTA's position and if so, what is your position?

Mr. Smith: I do not adopt their position in a lot of areas. Certainly, it is a giant organization, and getting input to that organization is rather difficult. The membership has decided to go the route it is going, I think far too much in the direction of deregulation. So our opinion is different.

Mr. Gregory: Basically, you are saying you are totally and unequivocally opposed to deregulation.

Mr. Smith: Yes. I think the present system is much better. Certainly, the use of the Ontario Highway Transport Board has been great in screening out the bad operators. Some of the things the OTA is recommending I agree with. I believe the commercial vehicle operators registration is a good thing, a means of getting to the person who is actually operating the trucks. OTA is certainly in favour of safety legislation and I am too, but I do not think any amount of legislation will provide the safety to the motoring public that a well-run trucking operation will, because they have their own safety standards and they police them themselves, trying to run a proper operation.

Legislation is fine, but somebody has to enforce it. I know in our operation, a lot of our standards would never become legislation: for example, how far apart trucks have to run on the highway. Our policy is that no two trucks going down the highway can operate closer than a quarter of a mile. Safety legislation will never provide for that type of thing.

Mr. Gregory: Not totally, I suppose. But in the same way, it will not provide for keeping people driving within the legal 100 kilometres an hour. I do not think I have ever seen anybody on the 401 driving 100 kilometres an hour.

Mr. Smith: All our trucks, Mr. Gregory, have a 90-kilometre speed limit. I am sure if you followed them throughout the province--

Mr. Gregory: Then I am going to find one to follow. That was really what I was driving at. To be more specific, and I use the terminology I used with Mr. Sommerville, if rape is inevitable, then you see safety as being one of the biggest things that we have to really take care of.

Mr. Smith: Certainly it is, yes.

Mr. Chairman: Did you tell Mr. Lane what you were going to say when you brought him here?

Mr. Smith: No, I really--

Mr. Chairman: Do not answer that question. We are just teasing.

Mr. Pouliot: I would have liked to ask Mr. Robert some questions, but obviously time is the limitation we all have to respect, which brings me to a question. Mr. Gregory mentioned the emphasis on safety, which as we go through briefs similar to yours, sir, is becoming a sort of sacred trust where everyone repeats that safety is the order of the day.

But just as important in your case, and correct me if I am wrong, I heard you say that if deregulation--which has certain elements, some of them present here--were to take place, you would simply go out of business. Is that right?

Mr. Smith: I do not know the effect. We have a network in place with a lot of fixed terminal costs, which are there because we have tried to accommodate our customers in the northern area. Any reduction in that revenue will affect us.

Mr. Pouliot: So you are a marginal operation, as is.

Mr. Smith: We are profitable today. Over the last five years, we have been granted licence extension and more area, and we have been able to put more volume over that given terminal area, thereby allowing us to reduce our rates substantially over five years ago.

Today, versus 1980, probably one third of our less-than-truckload rates are reduced, some substantially. This is a product of more volume over a given terminal area.

If you reverse that, a lot of small carriers, lumber truckers, are able to get individual licences to haul northbound and erode that traffic. Some of the bigger carriers may be very aggressive and decide to discount rather deeply, subsidized from larger operations across the border, and we could not compete.

Mr. Pouliot: One last question, if I may. What is your payroll? I am saying this directly related to the north in terms of its significance to the northern economy. How much money do you pay your employees who live up north? I do not want to know what they make an hour; that is irrelevant. What I am saying is the overall payroll. That has an impact on the northern economy.

Mr. Smith: I am not sure of that figure. It is around \$5 million-plus. I have not figured it out, but it is substantial.

Mr. Pouliot: So I would not be catastrophizing if I were to say that, hypothetically, \$5 million could be removed from the northern economy if deregulation were to take place and if, heaven forbid, you were driven out of business.

Mr. Smith: I would want to check my numbers--375 people, truck drivers, mechanics, office personnel. Certainly, truck drivers would average \$35,000 a year and mechanics \$30,000 a year, whatever that would come to in total. Those are direct jobs. There are a lot more jobs connected with them than that.

Mr. Pouliot: Thank you, Mr. Smith. I think the point is well taken in a region where the degree of unemployment is twice the provincial average.

Mr. Pierce: In your operation, do you hire any owner-operator trucks?

Mr. Smith: Yes, we do.

Mr. Pierce: It has been said here on a number of occasions in presentations that the drivers of owner-operated trucks are not as safety-oriented and their equipment is not as adequate as that of trucks owned by companies. Do you believe that?

Mr. Smith: They are in our operation. We have our own set of specifications, and they have to come up to those specifications. We police them the same as our regular drivers. We pay them by the mile and by the hour, not on percentage. I know in a lot of companies there is quite a trend to get into the brokerage business and let the broker take the brunt of the reduction in rates.

1740

Mr. Pierce: Generally, it is in the interest of the owner-operator to make sure his truck is in good operating condition, that it stays on the road and keeps running. It does not do him any good to have it sitting on the side of the road with flat tires, drive shafts out, and broken axles or anything else, any more than it would pay an operator or a fleet owner to be sitting on the side of the road.

Mr. Smith: That is true if he has the money to fix his truck. Working on a percentage of revenue, as a lot of the major companies do, they may well not have enough money to maintain their truck; so they patch it and run, and try to run more hours to make more revenue so they possibly can fix it.

Mr. Pierce: The other thing that I would imagine would happen is, if you were in charge of the fleet that the owner-operator is hauling, it would be in your best interest to make sure he gets to his destination as quickly as possible, but, at the same time, as safely as possible.

Mr. Smith: Yes.

Mr. Pierce: So you are not going to continue to hire an owner-operator who does not have good safety equipment.

Mr. Smith: We have watched operators in northern Ontario, and we have had to compete with them or they would cut any rate we have. They are only interested in getting their revenue, taking their portion off the top and leaving the rest with the operator. We have seen the results; but sometimes it takes 10 years for that company to finally go out of business or have to sell; but they are there a long time doing that.

Mr. Pierce: Could I ask you, in Manitoulin Transport Inc., what percentage of owner-operator business would you have? If you could give a percentage, would it be 20 per cent of your business, and the other 80 per cent is carried on by your own operation?

Mr. Smith: Over the highway, I would think it would be less than 20 per cent with the owner-operators moving long distances. In pickup and delivery within the towns and cities, that is. Then it reverses and it is probably 80 per cent bulk, which is 20 per cent company.

Mr. Pierce: The reason I asked that is because my riding is one of the furthest in northwestern Ontario, north and west. I see more and more owner-operator trucks and, at the same time, I see better equipment by owner-operators than I do by some of the transport companies.

Mr. Smith: That is possible.

Mr. Pierce: Certainly, any conversations that I have had with some of the owner-operators is that they do put in more hours, they travel longer hours and drive further distances. In most cases, I would say they are very, very proud of the piece of equipment they have underneath them, and they keep it in good condition.

If, in fact, they are sitting on the side of the road with a flat tire, the tires are usually off the trailer they are hauling for somebody else, and not off the truck they are driving.

Mr. Smith: That is certainly possible.

Mr. Pierce: I just wanted to get that in the record because I certainly see some fine-looking pieces of equipment by owner-operators out on the highway. The reason for that is that they want to keep trucking.

Mr. Smith: There are some good operators out there where they can make sufficient revenue.

Mr. Pierce: Is your operation going more to owner-operator or more to company-owned equipment?

Mr. Smith: More to company-owned equipment.

Mr. Pierce: On the highway.

Mr. Smith: Yes.

Mr. Gregory: Mr. Pierce, I think you hit a very important point. Earlier on today we heard that any owner-operator who was going to be operating under this deregulated market was automatically going to be running a rundown truck. What you are saying is that there is going to be some of that, but it is pretty much a generalization to say that every owner-operator is going to let his truck go to hell.

Mr. Smith: I do not think that is the case. Maybe some of them.

Mr. Gregory: Generally, they would be no better or no worse than trucks owned by a company. Is that fair?

Mr. Smith: That is a hard one to answer.

Mr. Gregory: I guess what I am getting at is that it would not be fair to say that because of a deregulated system there are automatically owner-operators who are going to be driving wrecks, letting them go and not repairing them.

Mr. Smith: That is true. My main concern is the transport company that hires them. If they really do not care, and want to make the revenue and dollars themselves at the broker's expense, the broker will be abused. On the other hand, there may be a lot of brokers who have small operators getting their own licences. Under that situation they will not know their own costs and may run into financial difficulties if they begin competing one with the other.

Mr. Gregory: So any part of legislation that deregulates should put the onus on the companies that hire these owner-operators?

Mr. Smith: I would certainly agree with that.

Mr. Gregory: To make sure that maintenance is done. Is that fair?

Mr. Pouliot, you may laugh, but I am more interested in this business--

Mr. Pouliot: I can appreciate your dream. I am not laughing at that.

Mr. Gregory: --other than the social aspect of providing jobs. There is more to it than that.

Mr. Pouliot: There is a real world out there.

Mr. Gregory: Yes, I know that. I think that is an important part and I do not think you can blackball the owner-operator and say he is automatically going to drive an old crotch simply because he is an owner-operator.

Mr. Pierce: A question that bothers me is, we appear to be seeing fewer trucking companies and more trucks on the road under existing

regulations. Is there anything that protects the industry, is there anything that protects the people in northern Ontario from you being bought out by an eastern trucking firm under the existing regulations?

Mr. Smith: No. Only that if someone wanted to purchase it, we would not sell.

Mr. Pierce: Under the existing regulations, those jobs we are talking about here today in northern Ontario, could vanish as quickly under the existing regulations as under any change in the regulations?

Mr. Smith: But under the existing regulations we feel confident we can continue on in business and continue to service the north. It is the new rules that are really bothering us.

Mr. Pierce: The major threat under any proposed changes would be the threat of American companies or the larger companies, primarily the American companies, coming in and buying you out or doing you out of your business?

Mr. Smith: Erosion of any of our existing profit in northern Ontario will jeopardize our position. We have fixed costs there; we have today's revenues to service those fixed costs. We cannot take them away. Today, it is certainly our plan to continue in operation. I have no intention of selling out as long as we can make a go. I am a northerner. I am deeply committed to the north and we are going to make it go.

Maybe I could drop back a number of years ago when the north was split up among carriers. There were some carriers serving North Bay. Some would service Sudbury and North Bay. Others would go to Sudbury and the Sault. If you wanted to get a shipment from Sault Ste. Marie to Timmins, it might take a week and it might be handled by two or three carriers. We put the whole thing together in a big network, which has really done things for the businesses in northern Ontario. They can get supplies between points in the north readily. There is a lot of manufacturing now that was never there and we can provide that service. Anything that erodes that traffic could end up in disaster for us.

As we see the TTA, anything I have read, it will not be difficult for individual lumber truckers to get licences to haul back freight up north. It will not be difficult for anyone to get licensed to haul less-than-truckload freight in the north, particularly, as you mentioned, the larger American concerns where they are prepared to go into a marketplace such as northern Ontario with reduced rates, which they can cross-subsidize from the south. They are still not going to have the commitment we do to northern Ontario and serving it between points. They are going to be looking at the more lucrative Toronto-Sudbury, Toronto-Sault Ste. Marie lanes.

Mr. Pierce: Certainly, we have seen an improvement in the trucking industry in the delivery of freight in northwestern Ontario in the last 10 years over what it was 10 years prior to that. You could literally stand on the highway and watch your load of freight go right by you. It had to go down to Thunder Bay, get turned around, transferred into another van and brought back up another 120 miles; naturally you were paying the cost of that freight going right by your door before you got it back again. That is no longer happening, but I can see it could happen again.

Mr. Smith: We provide overnight service within all points in our system on a continuous basis. We have even expanded that through our Toronto

terminal to include a good part of southwestern Ontario. Through Listowel Transport, we can provide overnight service, for instance, from Cambridge to Hornepayne. I think it is 712 miles or something like that.

Mr. Pierce: Let me congratulate you on your commitment to northern Ontario. That is certainly admirable, and I know it is not easy surviving in an industry that is as vulnerable as yours is in northern Ontario. My congratulations to you and your company.

Mr. Smith: Thank you.

Mr. Chairman: Mr. Lane, can you wrap this up for us?

Mr. Lane: I appreciate your rescheduling the afternoon so we could be heard because of the vote in the House. I guess the bell is probably ringing for that at this point.

Mr. Chairman: It is supposed to ring at 10 minutes to the hour.

Mr. Lane: I appreciate that. I would just like to say Manitoulin Transport is the largest employer on Manitoulin Island. We certainly cannot afford to lose 91 jobs on Manitoulin Island or both he and I will have to leave the island, but Doug has bent over backwards. He is a home boy, and as he said, he has the system in place. It has cost him a lot of money to put it there. He runs a good ship. He deals fairly with his people.

I am sure you do not want to see jobs go in Sudbury either, Mr. Chairman, and what he is saying is very true. If his business is eroded to any great degree, he will not be in business because he cannot afford to be, and we cannot afford to be without him. I would just like to put that on the record.

I guess Mr. Gregory and I are the only two people in the room who were on the committee back in 1976, I guess it was. I am sure anybody who was on that committee and heard the horror stories we heard, under oath, mind you, that the gypsy drivers were taking pills and stealing tires and fuel and so forth in order to stay in business, sure would not want to see that happen again. Looking at the statistics from the United States, in the 1980s I understand that maybe there has been a slight decline in the cost of transportation, but there is also an 18 per cent increase in truck accidents. I think we have to be very aware of the safety situation. With that, Mr. Chairman, I thank you.

Mr. Chairman: I can only speak for myself in that I would be sorry to see Manitoulin Transport go. Life would not be the same as I was speeding between here and Sudbury on a weekly basis if those trucks were not passing me.

Mr. Smith: Going in the opposite direction, Mr. Chairman.

Mr. Chairman: That is right. Mr. Smith, thank you and your colleagues for coming before the committee. It is good to hear from northern Ontario.

Mr. Smith: Thank you very much.

Mr. Chairman: We should adjourn now until tomorrow. Tomorrow afternoon, I will have the tentative schedule for the health and safety hearings ready for your approval as well.

The committee adjourned at 5:53 p.m.

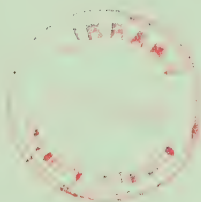
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

TRUCK TRANSPORTATION ACT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT

HIGHWAY TRAFFIC AMENDMENT ACT

THURSDAY, JUNE 11, 1987



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Witnesses:

Individual Presentation:
Fullerton, J.

From the Board of Trade of Metropolitan Toronto:

Maheu, B., Assistant Manager, International Trade Department
Mutch, W., Partner, Smith, Lyons, Torrance, Stevenson and Mayer
Ramm, G., Director, Transportation, George Weston Ltd., Food Processing Group

From the Wheeled Vehicle Carriers Association:

Saul, D., Legal Counsel; with Strathy, Archibald and Seagram

From the Canadian Pool Car Operators Association Inc.:

Saul, D., Legal Counsel; with Strathy, Archibald and Seagram

From the Ministry of Transportation and Communications:

Fulton, Hon. E., Minister of Transportation and Communications (Scarborough East L)

Smith, T. G., Assistant Deputy Minister, Safety and Regulation, Registrar of Motor Vehicles

McCombe, C. J., Director, Office of Legal Services

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, June 11, 1987

The committee met at 3:38 p.m. in committee room 1.

TRUCK TRANSPORTATION ACT
ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
HIGHWAY TRAFFIC AMENDMENT ACT
(continued)

Consideration of Bill 150, An Act to regulate Truck Transportation; Bill 151, An Act to amend the Ontario Highway Transport Board Act; and Bill 152, An Act to amend the Highway Traffic Act.

Mr. Chairman: The meeting will come to order. We are continuing our public hearing process on the trucking bills. Today we have four presentations. If we are to get on with it we should start now.

There is a possibility of one or more votes in the Legislature this afternoon which may interrupt the process, so we must be aware of that as well.

Our first presenter is Mr. Jack Fullerton. He is here, I believe, and will he take his seat.

JACK FULLERTON

Mr. Fullerton: I brought along some slides, Mr. Chairman.

Mr. Chairman: Okay. Visual aids are always interesting.

Mr. Fullerton: It is germane to what I have to say.

Mr. Chairman: Members of the committee have a written brief from Mr. Fullerton. I welcome him to the committee. We are pleased that you are here. If you would like go on with your presentation.

Mr. Fullerton: I notice everybody else is wearing coats. I represent the proletariat.

Mr. Chairman: Good for you. I am glad to hear that.

Mr. Fullerton: I thank you for this opportunity to appear before you. I want to clarify my position at the outset so that you will know where I am coming from.

I am not an expert in transportation. I bring no expertise to bear, nor will I be burdening you with tables, graphs or statistics. I think I can basically sum up my position for this committee with the story of the farmer who witnessed a head-on crash of two trains. and was asked to appear at a hearing.

When he gave his testimony he simply recounted that he heard the whistles, looked up and saw one train coming from the west and the other coming from the east, both on the same track and both going, in his words,

"full tilt." The chap conducting the hearing said, "What did you think of that?" His comment was that he thought it was a hell of a way to run a railroad.

My comments are really based upon observations gleaned over the years of driving Ontario highways. Some of these observations and opinions are based upon impressions and not upon any compilation of statistics. But I would point out that as I drove here today from Sarnia I deliberately counted the number of peel-off tires on the highway from Sarnia to here. I counted 85. That concerned me and reinforced the impression I had.

I carry a G licence, which gives me the right to drive a fair-sized truck. I have also ridden as a passenger on a car-tractor-trailer rig from Vancouver to Windsor. In the latter case it was a free-lance rig. The driver drove for 18 hour stretches. He would pull off the side of the road to sleep on the seat bench. He would ask me to sleep on a park bench or picnic table at the side of the road. I do not know how he survived but I nearly froze to death. It was a long trip.

I state that as a preamble. I would now like to now turn to my observation and impressions. I drive more than 50,000 kilometres a year on average, and have done so over the last decade or two. In that time I have observed the following. You have those in front of you. I am not going to read them to you, because I hate having people read things to me that I can read myself. There are seven of them for your perusal.

In the light of these observations, I would now like to turn to the legislation now being considered. I have learned from your officials in the Ministry of Transportation and Communications that Bill 150, An Act to regulate Truck Transportation, is primarily directed toward the economic aspects of the trucking industry. Its underlying philosophy appears to be to ensure a competitive environment within that industry. I applaud that initiative.

However, my concern focuses on the fact that the bill gives scant attention to the safety factor. That may be another bill and another aspect but, nevertheless, I did note that nowhere in the bill did I find the word "safety", or the words, "mechanical fitness." It may be true that in several sections they were implied or inferred, but my experience tells me that I prefer to see things written down rather than implied or inferred or assumed. When you imply, assume or infer you leave yourself open to all kinds of legal implications.

In this regard, I would like to offer the proposals that you have before you for your consideration as possible amendments to the legislation. I do propose to comment and give the rationale rather than deal with the specific amendments. You have those in front of you. They begin on page 2. You will note that mostly they do deal with safety.

With reference to A, B and C, which are the proposed amendments, and with specific reference to C, it is worth noting that the legislation in subsection 40(8) does give the government the right to write regulations "prescribing, regulating and limiting the hours of labour of drivers of public trucks." Clause 6(5)(a) does not include this law in the list of acts that the minister shall consider.

My concern there was that the driver should have the right to say, "I am not going to take the rig out," without fear of repercussions. I thought that

perhaps in that list that is given in the bill you might include that legislation so that the driver who, I hope, would read the legislation under which he works would be aware that he has the right to say, "On a bad day from Toronto to Barrie in a snow situation, I am not going to take the rig out because of the hazardous conditions." He would feel quite safe in doing so. I suggest that the inclusion of that specific act in this legislation might reinforce that position.

The committee might bear in mind that many truck drivers also function by doing a stevedore-type function. They not only drive the rig, they load it and unload it. I speak from personal experience in that regard. I drove a truck, and I know that I was always happy to get in and drive the truck because it was a lot easier to drive the truck than to lift those big packages, move them around and shift them back and forth. That was onerous. While I actually drove for only eight hours, I sometimes worked for 10, 11 or 12 hours, lifting things on and off the truck.

Subsection 6(1), which is the D section, again is a proposal. It is a recognized that the word "fitness" is further described in clause 6(5)(a), but there does not seem to be any provision for an annual or at least obligatory periodic inspection of the economic viability of the firm. My concern here again is that as times get tough in an industry, you begin to look for cost-cutting factors. It is easy to cut costs on things that do not show. Therefore, the tendency might well be to say, "Let us get another 10,000 miles out of the tire, another 5,000 miles out of the brakes," and so on. My concern is basically that.

You will have noted that there were some shows on TV out of the United States. There was the report in the London Free Press with reference to recent safety checks.

Mr. Sargent: 60 Minutes.

Mr. Fullerton: Yes, that is right. There was the report in the London Free Press on the recent crackdown--not crackdown but a more heavy inspection than normal. I am suggesting to you that all those things are good, but if you do not write safety in there, then something happens. Then there is the red ink on a trucking firm's books, perhaps it changes from black to red under the pressure of unrestricted competition, you may well find that the red ink on the books turns into red blood on the highway. That is my concern.

Recommendation E is about subsection 6(3). Consideration might be given to adding the words "who meets the requirements of such Ontario licensing," so that you are specific again, because I do not think there should be an automatic entitlement to a licence to drive on our highways without having to meet the requirements stated there. I am not a lawyer, but as I read the bill, it seemed to me the entitlement was almost automatic: if I had a licence some place else, I was automatically entitled to drive here; just as I have a car licence in Ontario, so I can drive in British Columbia.

If you recall the incident of the spilled polychlorinated biphenyls on the Trans-Canada Highway in northern Ontario, to realize how essential it is that all trucks travelling on Ontario highways and the drivers of those trucks meet Ontario standards. My recollection of that incident was it was a truck out of Quebec. That would give me cause for concern. I am suggesting that perhaps the day is well coming when rather than just containers, you may have whole trucks transported, in which case the truck would drive off the ship and proceed to its destination. In such a case, you may want to look at that.

Section F: I am suggesting section 27 should be amended to include a provision whereby the minister may cancel an operating licence in whole or in part where the licensee fails to demonstrate a continuing commitment, and I think it is the continuing commitment that is important, not just a one-time thing, but he has to indicate all the time through some kind of a process that he has maintained his commitment to safety and the maintenance of the mechanical fitness of the rig, because I think it may be deemed essential that on Ontario highways more than the letter of the law should be obeyed.

Subsection 6(5) sets out all the acts that must be obeyed in order for a licensee to remain in good standing. I feel it is most essential that it is the day-to-day operation and appreciation of, and commitment to, safety factors that will cut down on our highway carnage. The law compels, the spirit directs.

Section G: Subsection 32(1) and (2) simply sets out the minimum and maximum dollar penalties for violations. My suggestion is that these are too low. The amount should be amended to a much higher figure. I have simply put in figures to indicate that the penalty should fit the crime. I did a little mathematics on that and came up with the fact that if a driver violated the legislation and drove his truck from the Quebec border to the Manitoba border, and by violating the safety factors, managed to save 0.2 gallons per mile, he would come up with a savings in excess of \$153 on the trip. Now if you fine him \$150 and he manages to get in three trips, you have not really penalized him very much and he may well take the gamble.

My final comments relate to ongoing events. I understand from your officials that the computerized system for overseeing the trucking operations in Ontario will come fully on line in 1988. I am also led to believe, based upon the editorial appearing in the Toronto Star on June 2, and you have a copy attached, that a federal bill, Bill C-19, to deregulate interprovincial trucking is in the offing.

1550

There is also discussion ongoing concerning the provisions for allowing longer trucks on our highways. The request is to move the truck length from its present 75.5 feet to 115 feet. I refer you back to item 7 of my observations concerning driving blind in inclement weather. My calculations--and I would point out that math is not my forte--indicate that if a 115-foot truck was barrelling down slushy Highway 401 at 95 kilometres an hour, and I attempted to pass such a truck, it would take me 24 seconds to so do, driving the legal speed limit. I would suggest that if you close your eyes for 24 seconds, you would appreciate the length of highway you are driving without really being able to see very well. Anybody who has watched the Los Angeles Lakers-Boston Celtics games knows what a three-second violation is. That is a long time in the key, so 24 seconds on a highway while driving blind is not a good thing to have happen to you.

Again, I have experienced all these things. I did a lot of driving on Highway 401 between Toronto and London and Woodstock, which has to be the worst stretch of highway in the winter, Barrie aside. When you get the degree of truck transportation down that road on a bad day, you are blinded by that slush. No matter how good your windshield wipers are, they are not going to clean that slush off that fast. The question is, why would you want to pass a truck under those conditions; simply because there is another truck coming behind you. You are driving safely behind one truck and another trucking is coming behind you, he is going to pass you. If he passes you, again you are

driving 24 seconds blind. He may well take more than 24 seconds to pass you.

The Toronto Star editorial referred to earlier raises in connection with the federal bill much the same concerns I have voiced with reference to the Ontario bill you have before you. The Toronto Star editorial cites statistics relative to the experience in the United States where the trucking industry was deregulated.

I am suggesting it might be beneficial if the proclamation of this bill be delayed until all is in place; the total computer system is on line, the nation-wide safety code is established and any other provisions with regard to safety are in place.

Should the committee be so inclined, it may wish to examine, and this is just a proposal, the rules and regulations as they pertain to the safety and operation of school buses. I think they have an enviable safety record. They drive a lot of miles. I have suggested googols; a googol is a one followed by 100 zeros. That is a lot of mileage. The ratio of accidents is down simply because the driver or operator of the school buses is charged with the responsibility of maintaining them mechanically fit and making sure they are sound to operate on the highway, as well as making sure the operator is competent.

Further, I guess the committee might recommend a study to determine whether the trucking industry is bearing its fair share of the financial cost of maintaining the excellent highway structure. I have watched the House in operation on television. I have noticed the comments of the opposition with reference to the amount of money being allocated to the construction of highways across the province under the budget of the Treasurer (Mr. Nixon), and I am suggesting to you that perhaps an examination of the licensing factors might be made at the same time that consideration is being given to this bill.

Mr. Chairman, I want to thank the committee again for the licence it has granted me. I thank the committee for its polite reception of my views and proposals. I hope they will be taken under advisement and given consideration the committee feels they may want.

Mr. Chairman: Thank you, Mr. Fullerton.

Mr. Fullerton: I am prepared to answer any questions if you have any.

Mr. Chairman: Thank you. Just before I go to Mr. Gregory, that piece of tire intrigues me.

Mr. Fullerton: Yes.

Mr. Chairman: I have often wondered when I see them on the side of the road. Does the trucker know when that tire has blown?

Mr. Fullerton: I am led to believe, no. I have had tire separations on my car.

Mr. Chairman: You know then all right.

Mr. Fullerton: Yes, and it scares you. You know when that happens because it bangs like crazy and you think the world has come to an end.

What happened with me was, I drove a car and the tire separated. I went back to the manufacturer, in this case it happened to be Firestone, who makes a very fine tire, and said: "How come I have a separation, and I have had two of them? What are you guys doing to me? Stop selling me bad tires." They then proceeded to investigate and asked me if I ever carried any heavy loads and I said yes, two times a year I really load that car down with material. They then asked me when the tire separated and it was within two or three weeks of the overload. The tire simply separates and it stays on the road.

I actually picked that one up off the highway just outside of Ancaster this morning, coming down. It was in the middle of the road. At night I have driven over those and they scare you.

Mr. Chairman: Thank you. Mr. Gregory?

Mr. Gregory: Thank you, Mr. Chairman. Mr. Fullerton, I was wanting to question you on the tire, too, but I just wanted to say it would be very difficult, having read your brochure, to find fault with what you said.

I think I tend to agree with most of what you have said, at any rate, and particularly your description of trying to pass a double tractor-trailer. It would be a little scary.

Mr. Fullerton: Yes, particularly in your area.

Mr. Gregory: I wanted to ask you about the tire. What precisely causes, and I think you have touched on it, but what precisely causes that peeling?

Mr. Fullerton: I am not an expert. All I can tell you is what happened to me. The information I was given was that tire overloading causes the tire to flex more than it should. As a result of the flexing, the bonding between the layers of the tire gives way and it happens in the centre of the tire. When you stop to examine the tire, because you can feel the car going bump, bump, bump and you think something is wrong with your tire, so you get out and you look at your tires. There is no appreciable difference in the tire. You cannot see anything. The only way you can determine if you have something separating, is actually to push the tire around the centre with your finger. You can actually push it in and you say, "Oh, well, it's slightly out of a circle."

Mr. Gregory: When I have been driving along the road and passed them, I always had the impression somehow that they were some form of a retread.

Mr. Fullerton: My understanding is, not necessarily.

Mr. Gregory: Are retreads allowed in this day and age?

Mr. Fullerton: You can still buy retread passenger tires. I do not drive a truck and I do not--

Mr. Gregory: You cannot buy them for tractor-trailers?

Mr. Fullerton: I do not know. You would have to ask your people at the Ministry of Transportation and Communications.

Mr. Smith: Yes, you can buy them, Mr. Gregory.

Mr. Gregory: You can?

Mr. Smith: Yes, you can.

Mr. Gregory: Are they allowed on any of the 18 wheels or do they have to be specifically for interior wheels, or what?

Mr. Smith: They are allowed on any wheels except the front axle.

Mr. Gregory: Except the front?

Mr. Smith: Yes.

Mr. Gregory: Would they be more prone to separating like this?

Mr. Smith: I am not an expert. I understand they are not necessarily prone to separating. The separating usually occurs because of excessive heat, built up often because of overloading or because the tire is underinflated and it simply disintegrates.

Mr. Fullerton: My concern was not so much with the fact that the tire separates, as with the fact that it remains in the middle of a highway. I have driven over those at night, that size, and you come upon them at night and, because they are black on a black surface, you really do not see them until the last minute. There is not much chance, particularly if you are on a two-lane highway. You either go into oncoming traffic or you take your chances driving over that.

Mr. Gregory: In the event of a peeling such as this on a tractor-trailer, you say the driver probably would not notice it. Then I have to assume it would cause no danger to the control of the truck.

Mr. Fullerton: I do not know. When it happened to me driving a car and it was a rear wheel, it did not cause any appreciable change in the control of the car. It just scared the bejabbers out of me because it bangs against the mudguard or fender of the car, and I was able to pull off to the side of the road and recognized--but the funny part about it was I still did not see what had happened. I knew something had happened, but I really could not determine what it was.

Mr. Gregory: You mentioned in your brochure, and I think in part of your presentation, that in the event double tractor-trailers are allowed--I do not know what they call them--you called them "freight trains on the highway."

Mr. Fullerton: Trains, yes.

Mr. Gregory: If they were allowed, you said that the speed is going to have to be very strictly controlled. How do you do that, when we see a situation today--and you are a driver, you know what I am talking about and when you have a certain amount of speed up you do not want to have to gear down for a hill, so you go like hell down the hill so you do not have to gear down going up the hill. If anything gets in your way, you pass it and you get the trucks passing each other. It is almost like leap-frog up the highway.

Mr. Fullerton: Exactly.

Mr. Gregory: That is very dangerous situation. What are we going to do about enforcement that is going to be any different than we do now, if we get these double tractors?

Mr. Fullerton: I think you just tell a rig driver, the "train" driver, that he cannot get off the track. He is relegated to the specific highway, and I would suggest the dual highways are probably the ones he should be driving on. That is going to create difficulties in transCanada haulage, but be that as it may. If he gets in that lane, tough luck, he is in that lane. They tell me the average speed of a freight train across Canada is 14 miles an hour.

Mr. Chairman: Mr. Gregory, I hate to interrupt. The clerk was just talking to one of the whips and the vote on the agricultural bill is imminent. I think we should be up there for the vote. Mr. Fullerton, thank you very much.

Mr. Fullerton: You are welcome.

Mr. Chairman: I am sorry we are somewhat aborted, but we appreciate the presentation you have made.

The committee recessed at 4 p.m.

4:21 p.m.

Mr. Chairman: The standing committee on resources development will come to order, yet again. We must proceed. We have three more groups to hear from. I hope we will not be interrupted again with votes. However, who knows?

The next group is the Board of Trade of Metropolitan Toronto. Mr. Maheu is here, and his colleagues. If you would have a seat, and introduce yourselves.

Welcome, gentlemen. We look forward to your remarks.

BOARD OF TRADE OF METROPOLITAN TORONTO

Mr. Mutch: My name is William Mutch. I am chairman of the board of trade, distribution and customs committee. With me, on my right, is Gordon Ramm, who is director of transportation for George Weston Ltd. and on my left is Bud Maheu, of the board of trade staff.

My own experience lies mainly in the customs and international trade part of our committee, so I will be relying on Gordon as our principal witness.

The board has made submissions on the subject of a new public trucking act, dating back, at least, to early 1983, and has met with a number of the Ministers of Transportation and Communications, including Mr. Fulton, over the period. The board has always supported the thrust of the bills at hand, but we have filed a brief brief today, setting out some of our remaining areas of concern. These areas include, in particular, the fitness and public interest tests, intercorporate hauling, and the publication of tariffs. Of course, we do not propose to read the brief, but I would like to call on Gord Ramm now to summarize our views, particularly in those three areas that I have mentioned.

Mr. Ramm: Thank you. If I could ask the indulgence of the chairman and the committee members to refer to the bottom of page two. We will deal with the fitness test. As Mr. Mutch has indicated, on many occasions previously, we have adopted the position that we are supportive of a fitness test that will ensure licence holders are qualified in all aspects of the trucking business. We would caution, as we have previously, that such a test be reasonable and not unduly restrictive, particularly for small applicants

who are fit, willing and able to enter the trucking business and can demonstrate adequate financial and operational capabilities. The test must be such that it will only screen out those applicants who, because of lack of an acceptable fitness, could do significant harm to the common carrier system.

The board of trade sees no justification, whatsoever, for a public interest test and are opposed to using this public interest test as a mechanism to balance supply and demand. We recommend that only a fitness test be included in the proposed act.

Now, referring to page three, dealing with intercorporate exemption: Again, in previous submissions we have indicated we do not believe there has been any detrimental effect to the trucking industry from the current intercorporate regulations. As previously, we urge the proposed 90 per cent ownership requirement be replaced by "not less than 50 per cent." We outline five other provincial jurisdictions that are adopting, or have adopted, 50 per cent.

Another concern that we have is mentioned at the top of page 4, dealing with section 18 of Bill 150. Members of the Board of Trade of Metropolitan Toronto found this section to be somewhat obscure and difficult to enforce. We have stated many times that we are against collective rate-making and that we are opposed to any form of regulation which gives any agency the power to determine and enforce rates.

The carrier is the best judge of what his rates should be, and the marketplace will determine if this judgement is correct. We believe the marketplace is the best method for controlling carrier pricing and reiterate our previous position, that is, we are opposed to rate filing or publishing, and recommend that the legislation should clearly state that position.

That covers the three main concerns of our brief. In the interests of time, we will now be pleased to answer any questions.

Mr. Chairman: Okay. Thank you, Mr. Ramm, for your concern for the time constraints.

Mr. Wildman: How do you respond to the arguments that have been made before the committee that rates are also related to safety?

Mr. Ramm: That rates are related to safety? I do not think there is really any true connection, Mr. Wildman, between rates and safety. Perhaps you could elaborate--

Mr. Wildman: There has been suggestion that in some jurisdictions where deregulation has taken place, such as California for instance, large firms that can afford to take a loss for a time will cut rates substantially in order to force other companies out of business; and, in trying to meet that competition, smaller companies will also cut their rates to the point where the only way they can survive at such a low rate is by cutting maintenance and safety work on their trucks.

Mr. Ramm: I think in the case of California, some recent studies have indicated that when deregulation was implemented the rates had been artificially high in that there was plenty of room for the manoeuvring on the part of the existing trucking companies, and that when the new entrants entered into the market and offered lower rates, those rates were still compensatory. Because there was sufficient room to manoeuvre on the part of

the larger established trucking companies, they were able to drop their rates. I think the information that I have seen suggests that the relationship in California between rates and safety is really not there.

Mr. Wildman: The Ontario Trucking Association presented graphs before this committee which indicated that the rates of accidents have gone up substantially in California since deregulation.

Mr. Ramm: We have said in our brief and we have said previously that we are as concerned about safety as anyone. The part of safety that is most important if you are going to have economic deregulation is the enforcement aspect. We have no problem with safety enforcement.

Mr. Wildman: Are you concerned about corporate concentration in the trucking industry?

Mr. Ramm: I think we already have a certain element of corporate concentration. One only has to look at what has happened in Ontario and Canada over the last seven or eight years.

Mr. Wildman: The reason I asked that is that the Ontario Trucking Association also said deregulation will inevitably benefit the big trucking firms at the expense of the smaller trucking firms. In the long run there will be more concentration.

Mr. Ramm: Not speaking on behalf of the board, but speaking on behalf of personal experience where we have US operations, we have found the reverse to be true. Although there has been a concentration in certain markets on either truckload or less-than-truckload traffic, generally speaking there is always someone there who will provide you with the service that you require.

Mr. Wildman: At whatever the market will bear.

Mr. Ramm: At whatever the market will bear, and bearing in mind the safety requirements.

1630

Mr. Wildman: I will not pursue it. If you couple, as I think you should, enforcement of safety regulations with deregulation, it seems inevitable, after a period of adjustment, that the small operator will be forced out because he will not be able to compete with the rates and at the same time maintain the safety record which will make it possible for him to avoid sanctions by the enforcement authorities.

Mr. Gregory: Gentlemen, I notice a great similarity in your presentation and what you are advocating. Basically, you are in support of the bills, with some modifications. Those modifications run virtually parallel to those suggested by the Ontario Trucking Association. They are very similar, except for one recommendation they had, and that is, allowing double-trailer trucks to operate on Canadian highways. Do you have any opinions on that?

Mr. Mutch: We made a submission on that, I guess it was in 1986 but I do not recall precisely, to the effect that it be tested. We think a test is fair. We have seen some studies, as I recall, that indicate that the slush and water problems really are not as bad as you might imagine. But it is an important subject, so we advocated a test.

Mr. Gregory: A test. Do you go to a particular company and say, "You can use them for a certain number of months," and see how they work?

Mr. Mutch: We did not consider the mechanics, but I suppose you could apply to be a test company. Certainly routes would be restricted and there would be suitable restrictions because efficiency is important. If some of the studies in favour of long trucks are right, then I think the efficiencies could be achieved.

Mr. Gregory: I do not think there is an argument that certainly, without even testing, you would have to say that double trailers would be efficient from the standpoint of the people who are transporting goods.

Mr. Mutch: Right.

Mr. Gregory: But as part of that efficiency, how do you measure the safety aspect? You would have to do a testing period and if you have 20 accidents, it does not work.

Mr. Mutch: You would have to define your areas of tests and there have been tests run. I guess the results have been inconclusive because they have been conflicting, for instance, on the spray. Spray is an important part to those who criticize long trucks. I think there are spray tests that have gone in both directions.

Mr. Gregory: Yes.

Mr. Mutch: Some say long trucks produce less spray. Who knows?

Mr. Gregory: I would have to see that one. We had a gentleman before us yesterday who was a transportation lawyer. He stated unequivocally that if these bills were implemented, it would simply mean virtually the death of the trucking industry in Canada and that automatically the Canadian companies would be overpowered by the large American companies. Those were not his exact words, but along that line.

Mr. Mutch: Yes.

Mr. Gregory: I notice in your brochure you seem to think that the Canadian companies in competition come out rather well. Is that because of the lesser rate which I believe is about 75 per cent of the American rates?

Mr. Ramm: I think, as we mentioned in our paper, Mr. Gregory, there were a couple of studies done on behalf of the government which suggest that perhaps the Canadian industry is not going to fare all that badly, once we have full deregulation and that it has been competing rather nicely up till now with its American counterpart. There are already a number of Canadian carriers who have US operating authorities and there are a number of US carriers who have Canadian operating authorities. I do not know where you got your figure of the rates being 75 per cent of the American rates.

Mr. Gregory: Somebody gave it to us yesterday. I do not know who it was.

Mr. Ramm: I really would not want to comment until I--

Mr. Gregory: Quite apart from the percentage. Let us say, is it a given that the Canadian rates are lower than the American rates, or do you not know that?

Mr. Ramm: I do not really know that. My experience would be that--

Mr. Gregory: Did we not hear that from a trucking company that the Canadian rates are generally lower than the American rates per mile or something?

Mr. Chairman: They said they could do it for 65 per cent of the cost of the American trucks.

Mr. Gregory: Okay. That is where I got it then, from whoever said it.

Mr. Chairman: He was a trucker.

Mr. Gregory: At any rate, you are not of the opinion that simply passing these bills, in whatever form, would mean a death knell for the Canadian trucking business.

Mr. Ramm: No, sir.

Mr. Gregory: That we could hold our own.

Mr. Ramm: I think that we will survive quite nicely.

Mr. Mutch: There was a lot of fear, for instance, about the United Parcel Service arrival in Canada which, as far as I know, has worked out quite well.

Mr. Gregory: Do we have any figures that tell us whether it did or not?

Mr. Mutch: I do not.

Mr. Gregory: Did it put other Canadian courier services out of business? I do not know that, but maybe you do.

Mr. Mutch: I certainly do not have numbers, but my colleagues on the committee, I think, have commented and maybe Gordon can comment that the arrival of UPS did not really affect the business of others at all.

Mr. Ramm: In summary, I think it did not spell the death knell for the Canadian courier businesses that then existed. In fact, it probably enhanced it if the truth be known, if someone were to do an appropriate study on it.

Mr. Gregory: When anything of this sort arises, you generally get a bit of Henny Pennyism, "The sky is falling," this sort of thing, and usually it does not end up quite as bad as what was expected.

Mr. Sargent: I am interested to hear--a case for and a case against first--why the board of trade makes a case for the trucking industry. What business is that of yours?

Mr. Mutch: The efficient movement of goods is certainly a matter of interest to us and the various board committees cover a wide range of subjects, taxation, international trade, downtown development and transportation.

Mr. Sargent: How many other industries are you involved in, if you

are in trucking? You are in a lot more industries too?

Mr. Mutch: Yes. We made submissions, for instance, on the federal legislation in April. We went to Montreal to make submissions with regard to the railways and air industry. Our members are very much interested in this legislation.

Mr. Ramm: If I could just add to that, I think you will find, as you go through these proceedings, that much of the shipper community per se does not really have a problem with the thrust of the legislation. Just as the trucking association had a problem with a few mechanics within the bills, we too are making some suggestions which we feel will make for better legislation and so I believe will other shippers be doing the same thing.

Mr. Sargent: I would like to ask our officials, as far as the case for 90 per cent ownership requirement, what is the differential between your decision to go 90 per cent and that they want 50 per cent? What is the case for us here?

Mr. Smith: The 90 per cent is within the current legislation that was put in place a few years ago. We recognize that a number of provinces are moving towards 51 per cent or something in that order. A lot of that move is the result of a study that was done nationally to try to come up with a common approach. This was done through the Canadian Conference of Motor Transport Administrators. That study has recently been finished. In fact, it does recommend that we move towards 51 per cent, so there is a common basis across the country.

With this legislation, it was the feeling that a number of changes were taking place that were going to affect the industry and that at this time we should not make this change. Again, that is not to say the change would not come in time, subject to the legislation, but at this time, sufficient change was already taking place.

Mr. Sargent: What would be the argument against collective rate making? This board is against that. What is our case?

Mr. Smith: The legislation does not support collective rate-making. In fact, the result of the legislation will be a more competitive marketplace. I believe the board is referring to the portion of legislation that talks about published rates and in that case all we are asking is that rates be available on a carrier's premises for public access.

1640

Mr. Sargent: The marketplace?

Mr. Smith: There are two issues. As far as publishing rates go, the rates are available. As far as collective rate-making is concerned, the bill does not support that. The bill does support a competitive marketplace.

Mr. Sargent: Thank you.

Mr. Offer: Gentlemen, thank you for your presentation. It is nice that you have zeroed in on three, I think, of your main concerns. I would like to direct my question to one of those concerns, that is, the public interest test. I take it from your presentation that you do not believe it is necessary. I wonder whether you might be able to expand on why you do not

think that test is necessary from your point of view.

Mr. Ramm: The references we have made all suggest the trucking industry would not suffer if we were to move to a fitness test, particularly if, as we have been told by members of the ministry, the safety code will be in place next year. If we have the safety aspect in place, then we see no reason to carry on with the public interest test into the 1990s.

One has to bear in mind that this legislation was initially developed in the early 1980s. So we are now looking at not a five-year public interest test, but from the shipping community's standpoint, we are looking at one in excess of 10 years. We are saying, if we are going to have economic deregulation, then why wait another five years? We have already waited five years.

Mr. Offer: Thank you. If I might, I would like to direct a question to the ministry staff, because the deputies have clearly indicated their concern with respect to the reasons there ought not to be a public interest test, and I would like to get an understanding from the ministry as to the reasons for the public interest test and what it is designed to achieve.

Mr. Smith: The public interest test was introduced to cover a period of transition from a period where there is restriction on entry to a period in which there will generally be much more open entry and much easier access to the industry. We would expect a number of changes to take place during that period. The industry will be restructuring itself.

There has been a concern that there may possibly be entrance with a large amount of capital and a large number of vehicles that could disrupt the marketplace and in the end disrupt service to the public. The concern was that there be a means to allow those people to gradually enter the marketplace as opposed to coming in all at one time and creating a fair bit of turmoil and confusion.

The impact of the legislation is that if you pass the fitness test, you are then a fit operator; you can obtain a licence. If there is an objection, a case can be made that you will be disruptive, generally because of the size of the operation. The legislation allows for a hearing, and the result of a hearing is that the new company will gradually enter the marketplace through fleet restrictions such that in the first year, they will be allowed so many vehicles; the second year, so many more; the third year, so many more--over a total period of possibly four years. That is the basic impact. They can still go into business. They can still establish themselves. There may be a limitation on the growth of their fleet in order to allow for adjustment to take place.

Ms. Hart: How are you going to ensure that every application does not give rise to a hearing under the public interest test? Could the board not say for every application: "Public interest requires a hearing"?

Mr. Smith: The board has the opportunity to do that. Submissions go to it and must be reviewed. It has not been the intention of the legislation to have that happen.

Ms. Hart: Unfortunately, the board does not make the legislation. The legislators are going to make sure.

Mr. Smith: Yes. If it were to happen, then we would anticipate that

direction would emanate from the minister that would limit the actions of the board.

Ms. Hart: Are you talking about policy guidelines?

Mr. Smith: Yes. He would provide guidance about the manner in which the board should operate and consider these things.

Mr. Mutch: Two additional quick comments that came to mind arising from Mr. Sargent's questions on the intercorporate hauling.

The first point is immensely boring because it is a drafting point, but I thought I should raise it. The 90 per cent rule is contained in subsection 11(5), which is said to apply only to subsection 11(4) above, the immediately preceding section. On the other hand, the definition of a subsidiary is in a different subsection. Therefore, the 90 per cent definition does not seem to apply to the subsidiary. If I am reading it right, I think that is a drafting glitch. That is the boring point.

Mr. Chairman: For a boring point, it sure got their interest.

Mr. Mutch: Can you comment on that at all?

Mr. McCombe: If there is a mistake, it is a mistake made some five years ago. This is straight from the existing legislation.

Mr. Mutch: That is right.

Mr. McCombe: As I remember it, we copied the wording largely from the federal government, so it is all its fault.

Mr. Mutch: The subsection with the 90 per cent rule opens with the words "For the purpose of subsection 4" etc. I would have thought it would say "For the purposes of subsections 4 and 6," but perhaps somebody could look at that.

The other quick comment I was going to make on the same subject was that it is becoming increasingly popular to issue shares to employees, 15 per cent or 20 per cent possibly, as a share for profit-sharing. With the 90 per cent rule this becomes very difficult. I frankly do not understand where the number came from and I do not think it works very well.

Mr. Maheu: Mr. Chairman, with your permission I would like to comment on a question that Mr. Sargent asked. He wanted to know about the board of trade's interest and why we were interested, and I just thought I would mention to you that in Canada a board of trade is a chamber of commerce. As such, we are the largest chamber of commerce in North America and obviously the largest in Ontario. We have truckers, we have industry, we have manufacturers; you name it, we have it.

Mr. Sargent: I thought I had.

Mr. Maheu: Sometimes it is very difficult to come up with a consensus.

Mr. Gregory: Having said that, I have to assume from your remarks and from your brochure that you are really being advocates for shippers as opposed to truckers themselves. I am not saying it is a deliberate attempt to

do that, I am just saying that is how it appears.

Mr. Maheu: It is not a deliberate attempt. Our intent is what is best for Metropolitan Toronto--because that is our jurisdiction--second, for Ontario, and third, for all of Canada. If while doing this we step on one small facet of the board, it is unfortunate, but it is sometimes necessary.

Mr. Gregory: I am not saying it is a deliberate attempt to do that, I am just saying it appears that you are taking the position of the shippers as opposed to the truckers, the public, whatever.

That being so, I wanted to ask a question. A suggestion was made yesterday that perhaps the shippers themselves should bear some responsibility, not for the upkeep of trucks, but to make sure that those trucks are maintained in a satisfactory condition. In other words, the shipper should bear some of the onus for trucks being on the road in good condition. What is your reaction to that?

Mr. Maheu: You are getting out of the field now of the staff jurisdiction and into the field of our official representatives. I will let Mr. Ramm--

Mr. Gregory: Some of us do that from time to time. We get into the political end here.

Mr. Maheu: Unofficially I would, but not--

Mr. Ramm: As a shipper and as a good citizen of the business community, we have no problem with accepting responsibility in that area.

Mr. Gregory: You think that would be a good idea.

Mr. Ramm: I do not have any problem with that. I do not know if everyone else would agree that it is a good idea, but I do not have a problem with it.

Mr. Gregory: I think it is a great idea. I just wondered what your reaction would be.

Mr. Chairman: Gentlemen, thank you very much for bringing the views of the Board of Trade of Metropolitan Toronto.

Mr. Sargent: I would like to ask one more question, if I might.

Mr. Chairman: Yes. Sorry, Mr. Sargent.

Mr. Sargent: In other words, you are saying, gentlemen, that you are interested only in freight on the ground, not by air or not by sea--strictly on trucking.

Mr. Maheu: This particular submission is strictly on trucking. We have been down and we have made an oral presentation to the feds on the National Transportation Act, and this definitely included the other modes.

Mr. Sargent: Are you the only board of trade in the world that does this, or what?

Mr. Maheu: I hope not.

Mr. Chairman: Mr. Maheu, Mr. Mutch and Mr. Ramm, thank you very much for coming before the committee.

The next presentation is on behalf of the Wheeled Vehicle Carriers Association and the Pool Car Operators Association. Mr. Saul is speaking for those two organizations. Then he has a separate brief on behalf of himself or his company. I am not sure which. Himself? Please be seated. Welcome to the committee.

The committee has a copy of the brief. It is called Canadian Pool Car Operators Association Inc. It is the first one.

WHEELED VEHICLE CARRIERS ASSOCIATION
CANADIAN POOL CAR OPERATORS ASSOCIATION INC.

Mr. Saul: I will try to divide the time among the three briefs in a fair fashion.

Mr. Chairman: If you would make sure that we have time for an exchange with you after--

Mr. Saul: Certainly. I will deal with the Canadian Pool Car Operators Association Inc. brief first, if I may. At a later stage, you will all have the opportunity to examine the brief, so I will neither read it nor deal with it in detail. Perhaps I might just, by word of introduction, introduce that particular association and the participants, and where they stand in transportation.

Pool car operators in Canada function by gathering traffic together very much as a road carrier would, but have historically used railroad services for the line haul between major centres. They do provide a truck transportation service in the sense that they all provide a pick-up and a delivery service. In many circumstances, pool car operators are licensed as public commercial vehicle licensees in Ontario, and they are licensed in other Canadian jurisdictions where they use their own trucks.

Over the years, they have used Canadian National-Canadian Pacific by carloading traffic and gathering the bits and pieces from shippers in Toronto, for example, and then moving by boxcar into Winnipeg, or Regina, or Halifax, or Vancouver, where they handle a distribution function. So in that sense, they are a carrier, albeit they use rail in many circumstances for their line haul.

They are within the category of what would be called a freight forwarder in Ontario and they fall within the definition of a freight forwarder under Ontario's current legislation.

They have historically been unregulated. Even though the Ontario legislation would apply to at least part of their operation, there has been an easy understanding for the past several years that they not be licensed as freight forwarders. I can deal with that if there are questions on it.

Their position historically had been that they ought not to be regulated as freight forwarders because in many respects, for the most part, they function within a very strictly regulated industry, and that is they use rail services. What CN and CP could do historically has been very significantly regulated.

They have found that in the current change in transportation regulation, or re-regulation, every aspect of the transportation in which they participate, whether it is rail or road, is changing. They have determined that it is in not only their best interests, but also the best interests of the shipping and receiving public that they should be included in whatever regulatory program is designed to be put upon the trucking industry itself. They reached that conclusion for two or three very good reasons.

First, they are direct competitors of the truck transportation industry. They are direct competitors as freight forwarders within Ontario. They are direct competitors with the long haul truck carriers between Ontario and eastern Canada and western Canada. In every respect, they solicit the same customers. Their rates function competitively as between truck and forwarder or pool car operator. In every respect, they are both common carriers. Visiting the facility of a pool car operator would be almost identical to visiting the terminal facility of a carrier like Canadian Pacific Express, or Kingsway, or TNT Canada. You would see the small pickup trucks moving in and out, moving across a dock, and the only difference is at the other side of the dock, it is a boxcar as opposed to a linehaul tractor-trailer unit.

They issue bills of lading very much in the fashion of the licensed truck carrier and, indeed, for the most part, they use the same bill of lading that the regulated truckers use, notwithstanding the fact they are not regulated truckers in the main part of their transportation operation. The public perceives them as a competitor in the marketplace, and deals with them in a similar fashion. In that sense, it is their view that they ought to be treated equally as truckers, both from their interests and that of the public.

Let me give you an example. In the Canadian transportation system, we have developed a uniform bill of lading for all truck transportation. Indeed that applies to all Ontario carriers operating within Ontario, and between Ontario and other jurisdictions. There are limitations of liability of which the public is aware. There is a manner in which the public can protect themselves in using the existing mandatory bill of lading. While the pool car operator may use that bill of lading, it is not a mandatory contract.

Currently under Ontario legislation, there is a mandatory bill of lading for freight forwarders. The impact of the proposed legislation would be to remove the freight forwarder from that contractual obligation, from the statutory obligation of a contract with the public. The public, at that stage, is put in the position of dealing with each forwarder or pool car operator on the basis of whatever contract is available. So even though the public deals with these people as competitors of the truck operation, and even though they may have in their mind the idea that they are party to a common contract in the industry, that is not the case extra-provincially; it would certainly not be the case within the province if the legislation, as it stands, is passed.

There is a concept that was developed in the Ontario Trucking Association brief, which you will heard either yesterday or the day before, on the pool car operator or the freight forwarder becoming a haven for those who cannot otherwise comply with the regulatory requirements of the Truck Transportation Act. I know that Mr. Sanderson and Mr. Cope would have spoken to that the other day. On reviewing their brief, their brief is identical to the comment that we make on behalf of the Canadian Pool Car Operators Association Inc. to the extent that there is regulation by commercial vehicle operators registration only. The forwarder, whether he is a pool car operator or someone who is going to be using truck service for linehaul, is not caught by the legislation. He is entitled to use whichever trucker he likes, he may

change them at his whim, but as a common carrier competing with the industry that you choose to regulate, he is unregulated. He will use whatever bill of lading he likes and charge whatever rate he prefers. He can deal with them in a fashion that you cannot touch him.

A party, who might not pass your fitness test, can just as easily establish himself as a forwarder, wave goodbye to your fitness test, hire five truckers who had passed your fitness test, and use their services to provide his service over the road, in part or wholly. It is a haven that you create for someone who does not want to go through your test.

In addition to that, aside from the fitness issue, you create a situation where a party who might not pass the second test--that is the public interest test--has the opportunity to move into the marketplace without so much as a "how do you do" to the minister, the ministry or the board.

1700

By that, I mean to say any carrier in the United States, or indeed in Manitoba, refuses to enter the marketplace as a freight forwarder and solicit the same traffic that the truck operator has may do so by doing the licensed carrier's truck. He may go into the marketplace in a fashion that would be detrimental. It may be significantly detrimental in terms of the size of an operation he brings to the marketplace, and he may do so because he may have a great deal of market strength.

Mr. Smith, you will be aware that some time ago Yellow Freight decided to enter the Ontario marketplace in just that manner. Yellow Freight runs at about \$1.6 billion in annual revenues now and rather than come to the board and get the licence, it simply gathered the traffic together in the United States wherever they had terminals. They sought and obtained a truckload carrier service to move the traffic over the road into Ontario and they did the distribution using local cartage established either by themselves or through contract.

That brought a significant transportation force into the marketplace and it did so without being obliged to deal with any of your regulatory authorities. What is proposed in this legislation is something more than that because you will have given up complete control over that type of market entry and you will have done so in circumstances where even if you thought you could control the largest carriers from coming in, you will not be able to do so because they will be able to contract their way into the marketplace and the detrimental impact will be here and long gone before you will have had a chance to deal with it.

The pool car operators, as part of the freight forwarding group, believe that it is important that if there is to be an efficient and consistent control of transportation, then it ought to be a control that applies to all segments of the transportation that are in this marketplace.

Yellow Freight, as a freight forwarder, is a major truck operator. It is now in the Ontario marketplace, and I will come to that in another brief. It is now in the Ontario marketplace by purchase, but as a truck operation it moved into the marketplace by being an unregulated freight forwarder. The same is available to any other carrier who chooses to follow that course.

I recall when the minister at the time, Mr. Snow, introduced the Public Trucking Act, as it was then called. He announced that it would be used only

in circumstances of either a depression or where a very large US carrier attempted to come into the marketplace, and that is where the public interest test would come in. It certainly did not touch Yellow Freight when it decided to come into the marketplace. I think that if you leave the freight forwarder out you leave a loophole in your legislation that ought not to be there, and you leave a significant part of the industry, with which the trucking industry competes, out of your legislation.

In a nutshell, I think that will sum up where we are coming from in terms of the pool car operation. I might say one thing in addition. There has been some suggestion that the commercial vehicle operators registration program will effectively regulate freight forwarders. In our view, that is not the case because any number of people may apply for and obtain CVOR permits and in those circumstances they may deal with the freight forwarder. It is the freight forwarder who is in fact moving the traffic. It is the freight forwarder who deals with the public, but in my submission your legislation does not cover that freight forwarder.

In the past, there had been a definition of the freight forwarder in the Public Commercial Vehicles Act. In the final stages, we submit that particular definition remain in the act and that it be enhanced so as to ensure that all freight forwarders, where they are functioning within Ontario, into Ontario or out of Ontario, are faced with the same test and the same public responsibility as you propose to put upon the truck transportation industry.

It is interesting to note that the freight forwarders in Ontario--the current licenced freight forwarders in Ontario--generally support their continued regulation and that is referred to in a report prepared by Mr. Radbone of Ontario and Mr. Craig of British Columbia to the Canadian Conference of Motor Transportation Administrators back in October 1985 where they indicate as much. It is also supported by the Ontario Trucking Association, the common carriers. It is supported by the Pool Car Operators Association. But from the point of view of the transportation industry, every one of those who compete with all the others support the proposition of continued and full regulation of freight forwarders, in the same fashion as truckers, but beyond that, the Canadian Industrial Transportation League has also taken the position, and still has the public position, that the freight-forwarding industry should be regulated in the same manner as the trucking industry. I had that on authoritative word not more than 10 minutes ago.

If a major spokesman of the shipping industry, and if all the transportation industry sees this as an appropriate thing to do, I find it difficult to find a reason why it ought not to be done. The legislation should be amended accordingly.

The Acting Chairman (Mr. Wildman): Mr. Minister, I was wondering if you or your officials have any response to that before we open it up to general questions.

Mr. Smith: I can give the committee a short response. The legislation is drafted to deal with the vehicle on the highway, the truck that is operating on the highway. It is anticipated then that a freight forwarder will hire a licensed carrier and it is the licensed carrier that we would regulate, both in terms of entry and in terms of commercial vehicle operators registration. If he wished to use his own vehicles and so forth, that is something else. We have chosen to do this as opposed to moving upstream in the process and dealing with the freight forwarder or the shipper or others who

may in fact arrange for that transportation.

I think one of the problems that you may wish to comment on is the definition of a freight forwarder and how you separate freight forwarders from agents and others who may in fact arrange transportation.

Mr. Saul: I have not put my mind fully to the question of definition, but I think this is a fair comment. If there is a group of people, if there is a group of corporations, who choose to deal with the public and call themselves carriers, make arrangements for transportation, assume responsibility for the carriage of other persons' goods on the road, whether it is their truck or not, then they are as much in the marketplace as the truck carrier himself.

Issues of fitness are matters of concern to you in truck transportation. They do not seem to be matters of concern to you when you deal with the forwarder because you are not concerned with his fitness. It seems to me inappropriate that you leave the forwarder out because someone has suggested it is tough to define who he is and what he might be. That may be one of the roles that something like the Ontario Highway Transport Board can define with an appropriate piece of legislation and with appropriate guidelines so that it may over a period of time determine who falls within the scope of the legislation and who falls outside of it.

At what stage does someone who chooses to arrange transportation become someone who ought to be subject to the fitness test in the legislation? In what circumstances is that person merely a simple agent who is not dealing with the public in general terms, but is in fact the agent for a single person making those arrangements. I do not think that is an overly difficult task. I think you want to cast your net wide enough to ensure there is an aspect of public interest that you choose to protect. You have enough of the marketplace to make sure that you have what counts. I do not know whether Mr. McCombe back there or others have looked at the question of defining freight forwarder in such a fashion as to catch the appropriate people whom your public interest issue would be directed at.

Mr. Smith: Again, the tests do capture the person who operates the vehicle on the highway, which is our primary interest.

The Acting Chairman: I think it might be appropriate for us--obviously there is a difference of opinion.

Ms. Hart: I would also like to question staff about this because I have litigated this in many different pieces of litigation. Freight forwarders, agents, no matter what you call them, at common law are common carriers. As common carriers, they have responsibility for those goods. They issue bills of lading. Under those bills of lading, since they are not caught by this legislation, as I understand it, they can contract for any terms whatever with the shipper. There can be lesser liability than \$4.40 a kilometer. There can be no liability at all. This legislation does not catch them because the contract that we catch under the legislation is the contract between the forwarder or whatever you call him and the trucker. That does not protect the shippers. The shippers are at risk. Mr. Saul's point is well taken.

The Acting Chairman: Is there any response to that?

Mr. Smith: Only to comment that again it is not the intention of this legislation to act as a consumer protection mechanism.

Ms. Hart: Quite so, but you certainly infringe on that because you have prescribed terms and conditions of the bill of lading.

Mr. Smith: Yes.

Ms. Hart: How can you do that for one set of shippers and not another?

1710

Mr. Saul: I quarrel with that comment, Mr. Smith. When you look at what the minister is to review in terms of the fitness test, amongst other things he is to review the past conduct of the applicant, whatever that might mean. He is to review his financial integrity and customer service record, whatever that might mean. He is to review a whole host of operations conducted by the applicant under the Highway Traffic Act, Compulsory Automobile Insurance Act, Environmental Protection Act, Employment Standards Act and regulations thereunder and such other statutes as may be prescribed. You are going to review the applicant for just about anything he may have done in the past under any statute or regulation that you might choose to throw into the hopper.

I cannot see why in those circumstances you can say that we are not really regulating for consumer protection. You most certainly are. Fitness is an issue of consumer protection. Frankly, to suggest it is not, I do not think is accurate.

Ms. Hart: It is something I would like an answer to. We are going to have two sets of shippers operating very conceivably under two sets of rules. Do you have legal opinions on that? What work has the ministry done to resolve that problem? As a person who has looked for points like that to litigate, but it is going to be a problem and I would like to know what the ministry has done in order to satisfy itself that it is not going to be a problem.

Mr. McCombe: Could I ask Mr. Saul one question for clarification? Do you see your clients, the pool car operators, being under provincial jurisdiction?

Mr. Saul: It is my understanding that in the Cottrell decision that is precisely what the court said.

Ms. Hart: That is right.

Mr. Saul: The court said it had taken the position they were not under provincial jurisdiction because they offered extraprovincial transportation using rail services. The court said, "No, you are simply buying space on those. That is not your operation. Your operation is by truck intraprovincially and consequently you must get an Ontario freight-forwarding licence." That is the point at which the minister, Mr. Snow at that time, and the association determined that they would hold off the issue of licensing until there was further clarification.

The reason for that, Mr. McCombe, was that to that point in time the Ontario legislation, as it is today, was flawed. It has a provision in it that says that no public commercial vehicle licensee shall hold a freight-forwarder's licence. There were a number a freight forwarders who had historically applied for and obtained public commercial vehicle licences to cover their truck operations, which feed their car loading facility. In those

circumstances, you could not force them to get a freight-forwarding licence because the legislation prohibited them from having one. There was a great debate about whether if you had one licence, then you did not have to have the other. The fact is it was a badly drafted piece of legislation when it was put together in terms of freight forwarders. It has not been solved to this day. What is proposed by the Truck Transportation Act is really the abandonment of what might have been a good idea if somebody had worked at it properly and defined it accurately.

Mr. McCombe: Yes. I remember attending that meeting, but has not Cottrell been reversed since then?

Mr. Saul: I am sorry?

Mr. McCombe: Cottrell has been reversed since then, as I remember it, but I cannot cite the case.

Mr. Saul: I think I may just have it here.

Ms. Hart: No, on appeal. That was the decision. I have argued it 100 times.

Mr. Saul: I think it was the Supreme Court of Canada that actually made the decision. As I am talking about something else, I will find it for you and come back to it, but I do have--

The Acting Chairman: Mr. Minister, do you have any comments?

Hon. Mr. Fulton: Only that I think Mr. Saul and Ms. Hart have made an interesting point in case that we will take under consideration before we proceed into the House with the bill.

The Acting Chairman: Having said that, Mr. Saul, perhaps you would like to proceed with--

Mr. Saul: Number 2?

The Acting Chairman: Yes.

Mr. Saul: May I go to the brief which was prepared by the wheeled vehicle carrier industry in Ontario and two or three words of introduction.

First, I am sure you are all familiar in general terms with this particular industry. As you drive up and down the highway you see the peculiar looking trucks that are stacked with Toyotas, Hondas, Fords, Chryslers and the like. That is the industry. The group who are participating in this brief represents every carrier in Ontario who participates in the movement of new, uncrated motor vehicles. They are the carriers who move all the Chryslers, all the Fords, all the General Motors, everything American Motors manufactures in Ontario, all the import products. This group moves everything. For the most part they move everything into, out of and within the province of Quebec.

The production of the Ontario-based automotive industry moves by truck exclusively with this group of carriers. The brief deals with the volumes that we are talking about and the volumes are substantial.

The brief was prepared, not for this committee hearing specifically, but in relation to the Public Trucking Act, as it then was, and the Truck

Transportation Act, which is not dissimilar. It was prepared in relation to a free trade debate that is going on because, in many respects, for this industry and indeed, for all of the trucking industry, the question of whether you come to deregulation first or free trade first, becomes academic. They amount to the same thing.

What this brief says, basically, is that whether you are talking about economic deregulation by the Truck Transportation Act or the federal Motor Vehicle Transport Amendment Act, or whether you are talking about deregulation by free trade, you had better be awfully sure that there is a significant benefit coming, that it is measureable, because there is most clearly a significant detrimental impact coming to the Ontario-based wheeled vehicle carrier section, out of what you propose to do.

The brief lets you know, in some detail, not only who these people are, but how they operate. There is, at one page, a summary of the revenues that they have, approaching now probably \$175 million a year collectively. The brief indicates the extent to which they have a payroll and where that payroll is. If I may deal with that--this is back to 1985--their industry payroll was \$55 million. It is probably \$65 million or \$70 million now.

They contributed, through direct and indirect tax to the federal and provincial governments, at that time \$30 million, now considerably more than that. They employ currently something in excess of 2,000 drivers and staff. They are, I think without doubt, the most efficient transportation operation of their kind in North America.

The proposed legislation, if you follow it through, is most likely to destroy that industry in whole or in part. It will almost certainly oblige that industry to function in the future less efficiently than it does now. They will be obliged to do that, because they will have to compete with their American brethren who function less efficiently than do your Ontario-based carriers.

In effect, the brief indicates that international transportation in this business has been an interface, that is, the Ontario-based and/or Quebec-based carriers meeting the United States carriers at the borders. That was developed really out of the very stringent transportation regulation, through the Interstate Commerce Commission. It has continued through to this date for a number of reasons.

During the course of the development of the industry, through the auto pact and others, what has really happened is that the Ontario industry has grown rapidly. It has grown rapidly principally in its international operations, because the auto pact is destined to create the situation where we sell to the United States something in the range of 80 per cent of what is manufactured in Canada, in Ontario, and it is shipped to the United States.

So that these carriers have collectively 63 per cent of their gross revenue involved in moving motor vehicles from Ontario to the United States or back again.

1720

If you turn the picture around and look at the US carrier, taking the two largest, Ryder and Leaseway; they run at something over \$2 billion in gross revenue, and they have about five per cent of their gross revenues involved in international transportation. When you open the door, extra

provincially or intraprovincially, you open the door for our opportunity for five per cent of their revenue and their opportunity for 63 per cent of ours.

The talk about how, "the opportunity to get into the large US market is a Godsend," becomes nonsense when you look at some of the hurdles that have to be overcome. You will go through the brief I know in relation to other details, but aside from immigration problems and aside from customs duty problems which dictate who can drive and dictates whether you have to duty pay a piece of equipment to use it in the United States, there is the additional regulatory problem which has created two separate industries.

In Ontario, currently, this industry can run equipment up to 23 metres in length, overall, something around 75 feet, five inches, more or less. They are entitled, through permit, to operate to heights of 14 feet, four inches. At the insistence of General Motors, Ford, Chrysler and American Motors, they have developed equipment which is capable of handling more cars more efficiently than any other carrier in North America.

When you see that rig going down the road, you may see 10, 11, 12 or 14 cars on that tractor-trailer unit. It operates within the laws of Ontario and Quebec. It operates very efficiently. It gets to the border and it offloads those cars at Wellesley Island on the New York side or at Lewiston or Detroit and they are taken away by US carriers who operate equipment which does not exceed 55 feet in length, and in many circumstances, does not exceed 55 feet in length.

The reason the equipment functions like that is because interstate operations in the United States are restricted to 65 feet in length for the equipment, and on most state highways you are confined to 55 feet. In New York state, about 46 per cent of the road mileage is not interstate designation, so you are confined to 55 feet. In those circumstances, the tractor-trailer operation may move seven or eight or perhaps nine cars, depending on the size of the car, but clearly, for one unit and for one man, they function much less efficiently than our own equipment.

Because we interface at the border and have historically, they have this smaller truck operation going on but should they be licensed and be permitted to operate with that equipment across the border, or within Ontario, they can function completely with that equipment within Ontario. They are within Ontario's regulations, but if we take this group of carriers for whom the vast preponderance of their equipment cannot even meet the 65-foot length limit, their equipment cannot get outside of Detroit, cannot get outside three miles of Lewiston, and cannot get off Wellesley Island. They cannot do it because it is too big. It is too big because it is designed to be as efficient as the law in Ontario permits it to be.

Without much difficulty, but with perhaps something in the range of \$50 to \$60 million in cash, the Ontario industry, to compete head to head, point to point, to run from Oshawa to Kansas City, to pick up at a facility in Louisville, Kentucky to come back into the Toronto or London market, would have to re-equip themselves at great cost with equipment that is less efficient than they operate now.

The cost-per-unit for the Ontario manufacturer and the Ontario consumer has to go up because we have to get the same amount of money, but we are moving less product. You end up with less efficient transportation in Ontario, at higher cost, because you have decided to open the door in this fashion. That is a cost you have to look at. In terms of assessing the impact of what

you are about to do, I think you have to look at that as a cost.

When I talk about the extent of the industry, there are other aspects in here that you will want to deal with, but our automobile manufacturing plants are all within 110 miles of the border. I guess Oshawa would be as far away as anything. Certainly, Talbotville, Chrysler, St. Thomas, and even Ste. Therese are much closer to the border. The US manufacturing plants that are shipping automobiles into Canada are located in Detroit; in Los Angeles; Birmingham, Massachusetts; Louisville, Kentucky; Alabama; and in Florida. So the ability of our carriers to get to the US marketplace where the shippers are--remember there are only four shippers; three shortly when American Motors becomes part of Chrysler--they have to go a long way.

When they get there, the obvious problem they face is this one; a Canadian carrier delivering into the central state area and going into Louisville, Kentucky, to pick up traffic, because that is Canadian equipment and the driver of that vehicle is a Canadian citizen, he cannot pick up traffic that is destined to another point in the United States of America. The Louisville plant has to pick out, "There is one car that is going up to Canada and there is another car that is going up to Canada," and gather up these little bits and pieces of cars coming up to Canada. They may be going to Winnipeg, Toronto or Vancouver.

Practically speaking, it is almost impossible for the Canadian carrier to go to the US market and become a competitor unless he becomes an American, unless he uses an American corporation with American duty-paid equipment and with American drivers. Then that is no problem for him. He pops across the border into General Motors and Ford where 80 per cent of the production 80 miles from the border is going back to the USA. He already has equipment that will go anywhere in the United States, so it is not a problem for him. To turn around to the Canadian carrier and say, "All you have to do is downscale your equipment so that it will be less efficient, but function in Louisiana or Michigan, and away you go." The comment might be made that is international. That is extraprovincial. That is federal jurisdiction.

The impact is this. The US carrier is also in the position of the Truck Transportation Act to make the application for operations within Ontario and to ease the entry for him. In Michigan they have a public utilities commission, which has a test of public necessity and convenience. That was the bloodbath of the Ontario Highway Transport Board 20 years ago and they have not the slightest intention of changing that. The Michigan-based carriers, Commercial Carrier or Anchor, come into Ontario and they go through the little fitness test. They are certainly fit and they get their piece of paper and their marketplace. The Ontario carrier says, "If we are going to compete in this marketplace, we have to be able to do what they do; operate intrastate, internationally and intraprovincially. That is the package." Michigan says, "No, you cannot have a licence," but Ontario has already given Commercial the licence it needs. You put the Ontario carrier with its 2,000 employees and \$30 million in tax revenue that you are taking in an almost impossible competitive position.

If in the whole of what is proposed to be done is going to be a clear benefit, then that might be one of the sacrifices, but how certain are you of the benefits that are going to be achieved. In the OTA brief, they spoke to the question of reciprocity and reciprocal arrangements. It would seem unfair to have Ontario open the door. It is the Canadian prize in so far as the United States carriers are concerned. You open the door to them in circumstances where there is no reciprocal right, such as in Michigan, Indiana, Ohio, New

York state, Nebraska or most other states where they still have some very significant regulations. Open the door in circumstances where our ability to compete depends upon our ability to become Americans.

The Acting Chairman (Mr. Wildman): Thank you. Questions?

Mr. Gregory: I have one, Mr. Chairman. You kind of confused me a bit when you were talking about the inability of the Canadian contractors to operate in the states because of the length of their vehicles. Yet, the Americans can operate their smaller vehicles within Canada.

Mr. Saul: Yes.

Mr. Gregory: But you also said that the American system is inefficient and probably more costly.

Mr. Saul: Yes.

Mr. Gregory: Therefore, the American contractors would have an awful time competing with the Canadian contractors in Canada because the Canadian contractors now have this larger equipment and can probably do a better job much more cheaply in transporting cars within Canada. Really you have the Americans in the same situation that you say the Canadians would be in. The Canadians would have to buy new equipment to operate in the states. The Americans from a cost standpoint and an efficiency standpoint would have to buy new equipment to operate in Canada. Is it not the same thing?

Mr. Saul: It would appear that way, but the problem is transportation logistics. What you are really saying to a company is, "You are going to have to downscale your fleet for 63 per cent of the business that you handle now. You are going to have to take that fleet and you are going to have to segregate it so that these trucks only go to Michigan or New York and these trucks only go to North Bay, Sudbury or Ottawa."

1730

In practical terms, that is logistically impossible. The manner in which the operations function involve, in many circumstances, the blending of domestic with international operations. There may be an operation where part of a load may be destined to a point in western Ontario with the balance going on to the United States for delivery in Michigan. At that stage, it becomes impractical. What truck do I use? Do I use the Ontario truck or the US truck? In doing so, you create a situation where the additional cost the Canadian would have to incur in re-equipping himself--for example, I think it is fair to say that the cost of re-equipping for this industry would probably run between \$50 million and \$70 million for the equipment they would have to acquire to be able to participate in the marketplace.

Mr. Gregory: If the Canadian trucking industry was given complete access, total reciprocity with all the United States, but it was still subject to restrictions on the size of the truck, would the truckers re-equip themselves and take advantage of that or not?

Mr. Saul: I rather think they would not be able to. The reason I say that is that the capital expenditure involved in re-equipping yourself to be in the marketplace is enormous. You are talking about a company that might have \$50 million in sales having to spend \$22 million on equipment to stay in the marketplace. They cannot wait to do that at a later stage because in the

automobile industry there is a new practice with which I am sure many of you are familiar, the bidding practice. The industry goes out and says: "Here is the package. Bid on this package." When you bid, you have to be in the position to put the equipment on the road, to move the traffic, or you will not get the business.

Mr. Gregory: That is fine. Are the American companies not going to be in exactly the same position? In order to compete with Canadian truckers in Canada, it would be very difficult for them to re-equip themselves with the larger trucks that we allow.

Mr. Saul: Yes.

Mr. Gregory: Is that not the identical position in reverse?

Mr. Saul: If I had the option of being MCL Motor Carriers who had to put out \$20 million of my \$50-million revenue to stay with 63 per cent of my business, or Ryder System with \$1.2 billion in business and have to buy some trucks to run in Ontario to cover five per cent of my prospective market, I know where I would rather be. I know the capabilities of the carriers have got to be different.

Mr. Gregory: This \$50-million revenue you are talking about, surely to God the complete access to the United States would indicate there is going to be an increase in that revenue?

Mr. Saul: The Ontario-based carriers now have all the revenue available on international traffic. They have 100 per cent of it as it moves in Ontario. To the extent that they lose any of it to any US carrier, they have diminished revenue.

Mr. Gregory: Is this not a two-way street though? Bear in mind I am talking about total reciprocity. To me that means that a lot of the Canadian operators will then have complete access to markets in the United States which they do not have today. That means extra money. I am not a trucker, but I am a bit of a businessman and I know that if you extend your markets, it usually means more revenue. If that source of revenue was available, would any good businessman in the trucking industry not invest in the equipment necessary to satisfy them?

Mr. Saul: That is true, but he would do it as an American, because the propensity in US manufacturing plants is to bid a plant. The carrier is going to handle the production of this plant, and will handle it whether it is going to Canada--will take it to the border and give it to somebody else--will handle it whether it is going to California, whether it is going into the Chicago market, wherever it is going. The Canadian carrier, to participate in that big package, has to become an American. He is going to be participating in intrastate transportation, interstate transportation and foreign commerce. Why on earth would he be based in Ontario? He is going to have to use American drivers. In those circumstances, it has to be US equipment.

Mr. Gregory: Is this not what Yellow Freight Lines is doing? It has not become Canadian, but it did buy a Canadian company.

Mr. Saul: Yes.

Mr. Gregory: I guess in that respect, it has become Canadian.

Mr. Saul: It has an Ontario subsidiary, that is correct.

Mr. Gregory: Is the same opportunity not available to Canadian truckers, to do the same thing in the United States without becoming American?

Mr. Saul: In a limited fashion, yes, but only in a limited fashion. You will find--and Mr. Smith and others are aware of this--that those Ontario carriers who are moving furthest into the United States marketplace are now doing so through United States subsidiaries. They are doing so because, as a Canadian company with Canadian drivers, they are restricted to foreign commerce operations. They must go to and from Canada. However, if they set up a Delaware company and hire a bunch of owner-operators or drivers in Minnesota or in Ohio, then they function, not only in the international traffic--they can come into, and go out of, Ontario--but they also have a large US market.

If there was complete reciprocity, if there were no immigration laws, if customs duty did not apply, if all the states and the provinces had similar regulations with respect to the size of equipment that could be operated, then you have an open market. However, you do not have that.

Mr. Gregory: No, you do not have it at the moment. It is not a perfect thing. I recognize this, but I know, through our Ministry of Transportation and Communications, and through the federal department, they have been trying to promote complete reciprocity for years. It is moving very slowly, but it has happened in some states, has it not?

Mr. Saul: There is some limited reciprocity. We are certainly far ahead of where we were 10, 15 or 20 years ago. I know you were involved in the past studies on the Public Commercial Vehicles Act. Things have changed substantially. However, in this industry the market players are not even market players. Any one of the US carriers I spoke of--Ryder have much more equipment in their fleet than all the Canadian carriers in this industry combined.

Mr. Gregory: I keep hearing that the giant Americans are going to take over the world, and take over all of Canada. I recognize that threat and that argument. I understand it.

Mr. Saul: As a matter of interest, between the time this brief was prepared and today's date, one of the major carriers in this brief, in fact, sister companies, McCallum Transport Inc. and Transport McCallum (Quebec) Inc. which had been Ontario-owned, have now become United States-owned. In many respects this brief has been put before the trade negotiation office, before the international trade office, and Mr. Crosbie's office, and has been discussed at length. I think what you are going to see, you are already seeing--the Americanization of the industry. As it goes along, I think that will become complete.

Mr. Gregory: Yes, and it has been happening all along. We have several good examples where American trucking outfits have bought out Canadian ones. It was before this legislation was passed. I guess I am hearing from several sources. When this is passed, then this thing is going to happen--American truckers are going to start taking over Canadian trucking operations. It is already happening, for God's sake.

Mr. Saul: If you go back to what is happening in transportation regulation, we are in a substantial state of deregulation now. In many respects, frankly, the Truck Transportation Act is, to a large extent,

nonsense because the suggestion that there is substantial entry control in Ontario just is not the fact. There are licences granted day in and day out by the Ontario Highway Transport Board on very simple applications. The rate of success is not only high, but the extent of the applications being made, and the successful ones, is very significant.

We are getting into philosophy, but all I am saying is that if you think regulation today in Ontario is as it was five years ago, because we have the same act today as we had five years ago, then you will have missed what has been going on in the industry. There has already been substantial deregulation. The ministerial guidelines, which came down about five or six years ago, turned what was a public necessity and convenience test into what is now an economic test. I hear all the talk about fitness. The transport board conducts a very thorough, and very effective, fitness test on every application it hears. There is a lot of smoke and mirrors about the fitness program--

Mr. Gregory: What you are really saying is that completion and passing of these bills will complete something that we are well on our way to doing now, anyway.

Mr. Saul: You will accelerate what is happening.

Mr. Gregory: Accelerate what is already being done. Okay, thank you.

Mr. Chairman: We had better move on to Mr. Sargent because there is one more brief to go through.

Mr. Sargent: I have certainly been impressed with your presentation. You say there is a lot of smoke and mirrors involved in what--I agree with what you say. In June, 1981 you had a 34 member committee appointed by the Minister of Transportation and Communications to study reform of this act. This has currently been a practice since 1981--it has been going on all this time?

Mr. Saul: You mean the development of easier entry and licensing?

Mr. Sargent: Yes.

Mr. Saul: I think it would go back to about that time--the ministerial guidelines, which turned the test into an economic test--

Mr. Sargent: Why have our friends, the Tories, not fixed that up in the meantime?

Mr. Saul: I do not know. I am here to speak for the association, and they are not the association.

Mr. Sargent: I know. At this time, what I want to find out is: At what point are we now? Are the Americans coming into the marketplace, now?

Mr. Saul: Yes.

Mr. Sargent: I would like to ask our officials: At what point are you at now--to solve this? Is it under study with you, now?

Mr. Smith: I am unclear as to what--

Mr. Sargent: This is a bad situation. Are you on top of this, now? Do you agree with Mr. Saul's submission?

Mr. Smith: I am unclear as to what he is recommending.

Mr. Sargent: You know the problem here. This is news to me. I did not know this was going on. At what point is the ministry now able to handle this?

Mr. Chairman: Are you talking about the Americanization of the industry? I am sorry, I am missing something here.

Mr. Sargent: Frankly, we are looking for protection here. At what point are we going to give our people protection? The American invasion--that is what we are talking about.

Mr. Chairman: Maybe we could deal with that one for the moment. The whole question of the Americanization of the industry. Mr. Sargent is wondering whether or not that is a problem you feel you are dealing with.

Mr. Sargent: They tell us the Yankees are coming. Are they coming, or not?

Mr. Saul: Mr. Sargent, one of the interesting things is that there are a number who have come in. They are amongst the largest who have come in. What is happening--I know it for a fact because I answer my phone, and I answer questions. Some of the calls come from south of the border. What everybody is saying south of the border is, "Is it passed yet? Should we apply now, or do we still have to go through that procedure?"

These are not the billion dollar companies, but they are \$300 and \$400 million, and \$70, \$80 and \$90 million companies. There are lots of them. They are waiting for the opportunity to get into the marketplace. If that is appropriate, if it is a good idea, then you should know it is coming. It is important to know it is coming and to make the assessment of how good it is.

Mr. Sargent: Are our officials aware of this? How close are we to solving this problem?

Mr. Smith: If the issue is one of American entry to the intraprovincial, not international, market--the market within Ontario--in the past there has been no special barrier with regard to Americans. Americans have entered on the same basis as Canadians. The denial rate, the per cent that have been denied, is somewhat comparable. The proposed legislation would maintain the same principles. Americans would be able to enter on the same basis as Canadians.

Mr. Sargent: I think he makes a good case, though. Do you not?

Mr. Smith: I guess that is up to you.

Mr. Sargent: I did not know I had that much clout.

Mr. Chairman: Thank you. We had best move on to Mr. Saul's last brief, or we will not get through it.

Mr. Saul: The last brief was prepared specifically for this committee and to deal with the act. It deals with it in a procedural fashion, but in my view, a substantive manner.

Right now, the principal regulatory body dealing with truck transportation in Ontario is the Ontario Highway Transport Board. It receives the applications. It vets the applications. It publishes the applications. It sets hearing dates. It disposes of applications. It applies its fitness test, now. It determines matters of public interest, now. It now disposes of appeal proceedings within its own body. It deal with reviews only on direction of the Minister of Transportation and Communications. It basically is your controlling mechanism.

You have chosen, through the legislation, not to deregulate, but to make a regulatory change. You have chosen to continue to regulate the industry--no question about that. This is not deregulation. It is a change in regulation. It would be easier, in terms of vendor control, but you have chosen to regulate it in some fashion.

Mr. Chairman: The minister calls it reform rather than deregulation.

Mr. Saul: It is called a lot of things actually, Mr. Chairman. Having chosen to do that, you have made fitness an issue. You have said that fitness must be assessed. Clearly, it must be assessed objectively and judicially. When I say judicially, whenever you have a fitness test which has the right of somebody to deny access to a licence on the issue of fitness and where the fitness test deals with such vague matters as past conduct of the applicant; financial integrity, whatever that may mean; customer service record, whatever that may mean--when you apply that sort of an entry test, you had better be doing something that is fair and judicious and open.

The current system you have is exactly that. Any member of the public can see what is on the board's file. They can see the application. They can go to the hearing. They can read the affidavits. You have an open system.

You are proposing, in my submission, a closed system that is full of discretionary powers which are given to the minister. For the life of me, I do not know how the minister is going to handle them all, or he will delegate them to the ministry--to Mr. Smith and Mr. McCombe and Mr. Kivi.

Mr. Chairman: We will be getting to them.

Mr. Saul: He will delegate those to those people in circumstances where they will make decisions without the public having the opportunity to test those decisions for consistency, for fairness, for openness. You will have a system that will become suspect because no one will know how the decisions are being made. For example, if I file an application under your new system, somebody is going to look at my past conduct. Who is going to look at my past conduct? What past conduct are they going to look at, and how will I know what they have looked at or how they have determined what is important to them?

Currently, if I file an application with your board--indeed, this is practice with all of the Ontario boards--there is an openness about it which entitles me, as an applicant, to know why I have succeeded or how I have failed and what remedial measures I can take in relation to my application. The public, outside of that, has the opportunity of seeing into it.

You want an entry control system. That is going to be the public interest test or this fitness test. You have one now. You want a different one. You want reverse onus. So be it. But why should there be a lack of objectivity or a lack of a judicial approach to the application of the fitness

test. Just let me give you one illustration of where discretion is put into this act in a fashion which is unacceptable in my submission.

If an application is filed and I choose to oppose that application, and I ask that there be conducted a public hearing test, then there will be one, and the board will hear the test, and it does say that where I ask for that test--where the hearing is a result of my request--the onus is on me. Let us suppose that I do not want to go to that risk and I contact some friends of mine, and people come and people go, and I persuade the minister that, since there is going to be a test, why does he not ask for the test, and the minister asks for a test. When the minister asks for a test, the onus is on the applicant. The applicant must now prove that his application will not cause a significant detrimental impact on the public interest. What is the reason for that? Why should the minister cause one test to be applied and the public have another test to be applied? Who is to determine where the minister may decide to put a heavier onus on an applicant because, at his discretion--and the minister may--he decides to require the test be made where the applicant has to go uphill.

If the intent of the legislation was to reverse the onus and put it upon those people who would oppose an application, then it should be done fairly, and whether the minister asks for it or the public asks for it, why should the test be different? You leave a discretion in the minister's hands which is, in my submission, inappropriate and unfair. You lend to the possibility of abuse of the system in circumstances where that is not intended.

1750

Some of you will be familiar with the Ontario Highway Transport Board. If you look at the Truck Transportation Act, you are effectively taking the board and putting it on the sideline and saying: "On the rare occasion that we think there will be a public interest test, trot out in the field and perform your stuff. On the rare occasion where the minister, at his discretion, refers something to you, come on out. Perform your duty." But for the most part, you give all of the decision-making powers to the minister and to the ministerial staff.

You do that in circumstances where you have 10 people at a transport board. You have a chairman, recently the chairman of the Environmental Assessment Board. You have appointed counsel from Ottawa, Margot Priest, as a vice-chairman of the board. You have taken Ernie Magee as a vice-chairman, who was formerly with Procter and Gamble and a member of the transportation team of the Canadian Industrial Transportation League and the Canadian Manufacturers' Association. You have appointed Mr. Skelcher very recently out of the bus business. You have Mr. Norton from the bus business. You have Mr. Canning out of industry. You have a group of people who are representative of Ontario who have wide experience and who have skills in dealing with transportation matters, whether they be a public interest test or a fitness test, and you are going to take them all and put them on the sidelines because someone has deemed it appropriate to take all the powers they would have exercised openly and fairly and even-handedly and judicially, and you are going to move them all into the backroom at Downsview, if I have to put it that way.

You are going to put the decisions up there where no one will know how they are reached or why they are reached, and you are going to end up with somebody finally saying, "We now publish a notice of an intent to grant a licence." Unless somebody is doing something frivolously, the board may get

involved. I fail to see that there is any benefit to be achieved in taking the expertise that you have--Mr. Samis, who has very recently been appointed to the board, all these people and all their expertise--and to shelve them in favour of a group of--and I do not mean to be derogatory--faceless people making decisions under a significant statute for a major industry almost without right of recourse. I do not understand how you can do it.

Most of the proceedings that are proposed would be contrary to provisions in the Statutory Powers Procedure Act. If you go into the brief, you will see a recommendation under tab 5. Have a look at that for a moment. There is now in the Highway Traffic Act a disciplinary power which is held by the registrar of motor vehicles. Recently, the registrar began sending out notices to carriers in the industry in Ontario that their licences were to be cancelled and they should come in for a hearing. It is a serious matter to have your licence cancelled in the trucking industry. If your licence is cancelled, you are out of business. You are finished.

Those hearings are conducted in circumstances where, effectively, the judge is the registrar. Participating with the judge, as his assistants, are the chief prosecuting officer--the legal department of the ministry--and the police--the enforcement branch. There is no record of the hearing, and the matters which are determined at that time are determined not only on the information that the carrier gets, but on information the carrier does not have. It is, in terms of the Ontario Statutory Powers Procedure Act, in the nature of a kangaroo court. There is virtually no recourse from an unrecorded proceeding. I have participated in a number of them with Mr. Smith sitting as the registrar. I have participated in those proceedings where carriers were confronted not only with their operating record which had been mailed to them, but with reports from a scale at London or a scale in the Cornwall area, not on matters where they were charged, but on matters where a scale report was given and somebody said there was a loose kingpin.

The most appropriate way of dealing with this industry is through the board. The minister is aware and Mr. Gregory will be aware that a few years ago, the Ontario Highway Transport Board took a jurisdiction they did not have and conducted review proceedings. At that time, they reviewed carriers with respect to their operating records and violations of the Highway Traffic Act or the Public Commercial Vehicles Act. They did a very good job at it. A court decision took that jurisdiction away from the board. This act proposes to give nothing back to the board in that regard, even though the minister, in his remarks with respect to the legislation, indicates that would be a good idea. Wherever the board has something, it gives the board what the minister chooses to give the board.

The minister may refer a matter to the board. The minister may do something else with the board. However, the board, which is the objective organization--the judicial organization--has almost no power of its own to initiate anything.

What you have is the circumstance where, if there is a reason to grieve for the conduct of a particular operator, and I choose to seek redress for that, I must convince the minister to refer the matter. If there is a grievance, it seems to be appropriate that I should be able to go to a body which will have an objective view and will make a decision, appropriately, without having to worry about some ministerial discretion.

Look at the legislation you have and see what it says: On being satisfied with the fitness of the applicant, the minister shall do things.

Where the minister finds--the minister shall hold a hearing. This is in connection with false allegations in connection with an application. What type of a hearing does the minister hold? Is it under the terms of the Statutory Powers Procedure Act? What procedure applies? Is it a public hearing?

The minister may direct the board to do board hearings. Throughout the legislation, it says, "where the minister is satisfied." Who is the minister in these circumstances? Is the minister the registrar? Is the minister the staff?

If you are going to regulate an industry, and if the board is going to be the ultimate arbiter of the issue of public interest, is there any problem in saying to the board, "You receive the application. You look at the issue of fitness. You do it now. You publish the application. You make the determination of whether a licence should be cancelled. You make the determination of whether somebody is required to have a licence." They are the experts at it. They are set up. They function within the legislation of Ontario.

The legislation, in my mind, basically is designed to destroy the most effective judicial body you have dealing with administrative matters. It is designed to put it into bureaucratic hands, and it is designed, frankly, to create a situation where there will be deregulation because you are going to move the business of the industry into hands which are, to my mind, given to the deregulatory idea. I think it is inappropriate.

I think the legislation is poor legislation in relation to the standard of Ontario, in relation to securities legislation, municipal board legislation, liquor licence legislation, and labour legislation. There is an openness about what most of Ontario does in its legislative, administrative programs. There is no openness in what is proposed here.

The changes I propose are not significant. The changes are straightforward. The powers which are given to the minister should be given to the board. The powers which are given to the registrar, should be given to the board. It seems that it would be unfortunate to create a situation where you have applications filed with the ministry, where decisions are being made by the minister, and where the board is obliged to hold hearings and make determinations. Why have the ministry, the minister and the board all muddling together in the issue of your regulatory control and your surveillance of the industry?

If you have an expert board that is capable of doing it, why not say: "Mr. Minister, you set the guidelines. You determine policy. Mr. Registrar, you are the one who takes care of the details of operation and of licensing." But the board is the one given the responsibility of dealing with the industry in the area which you propose to regulate. It has the expertise. It has the manpower. It has a demonstrated skill. Yet, the legislation proposes to scrap it. I fail to understand this. I regard it as a cruel plan--a plan that is retrograde in relation to the manner in which Ontario was regulated in the past.

No other Canadian jurisdiction that I am aware of proposes to do this. In Alberta, Manitoba, Quebec--in all other jurisdictions--filings are made with the boards. The boards make the determination of public interest. They make the determination of fitness. They hold the show-cause hearings on questions of operating records of carriers. In Alberta, they do that. In Manitoba, they do that. You have one board that has the expertise to manage

the industry the way the minister, as a matter of policy, directs. It is efficient. It promotes consistency. It promotes efficiency, and you have a chance at it, but your legislation is not going to give you that chance if you pass the legislation as it stands.

1800

Mr. Chairman: Thanks, Mr. Saul. Would any of the ministry people or members of the committee like to respond? I think what you have said has been very direct, forceful and unequivocal.

Mr. Saul: It is too late to be otherwise.

Mr. Chairman: Yes, that is correct. The public hearing process goes on next week, and at the end of next week, we deal with the clause-by-clause debate, at which time, any amendments are in order from either the ministry or the opposition or government members.

Thank you very much for appearing before the committee. We appreciate it.

Mr. Saul: Thanks for the opportunity.

Mr. Chairman: The committee will meet again on Monday afternoon, at which point, we have a full agenda and will meet again Wednesday afternoon. On Thursday, we deal with the clause by clause of the three bills. We are adjourned until then.

The committee adjourned at 6 p.m.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

TRUCK TRANSPORTATION ACT
ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
HIGHWAY TRAFFIC AMENDMENT ACT

MONDAY, JUNE 15, 1987



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Hart, C. E. (York East L) for Mr. McGuigan
Ramsay, D. (Timiskaming L) for Ms. Caplan

Also taking part:

Pouliot, G. (Lake Nipigon NDP)

Clerk: Decker, T.

Staff:

Madisso, M., Research Officer, Legislative Research Service

Witnesses:

From Liquidus Ltd.:

Blackwell, H. L., President

From the Ministry of Transportation and Communications:

Smith, T. G., Assistant Deputy Minister, Safety and Regulation, Registrar of Motor Vehicles

McCombe, C. J., Director, Office of Legal Services

Fulton, Hon. E., Minister of Transportation and Communications (Scarborough East L)

From Westburne Industrial Enterprises Ltd.:

White, G. S., General Manager

From the Canadian Transport Lawyers' Association:

Zimmerman, R. J., Ontario Director

From the Ontario Mining Association:

Reid, P., Executive Director

Buller, M. J., Manager, Rail and Truck, Noranda Sales Corp. Ltd.

Johnston, K., Transportation and Traffic Manager, Inco Ltd.

From the Pharmaceutical and Toilet Preparations Traffic Association:

Agostino, D. A., President; Manager, Transportation and Customs, Eli Lilly Canada Inc.

Kopytowski, S., Highway Chairman; Distribution Manager, Rorer Canada Inc.

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, June 15, 1987

The committee met at 3:47 p.m. in committee room 1.

Mr. Chairman: The standing committee on resources development will come to order. Before we deal with the first presentation, it was agreed the other day that if members had any problems with the Workers' Compensation Board report, which is to be gently bound and then presented to the assembly, they should get them in to us by today.

Having received none, may I assume that we can proceed with the WCB report? There were no changes to it, so I do not think members need be concerned if they have not read every word as it was agreed to in the first draft. The second draft has virtually no changes at all except the introduction, so we will proceed with that, Merike.

TRUCK TRANSPORTATION ACT
ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
HIGHWAY TRAFFIC AMENDMENT ACT
(continued)

Mr. Chairman: This afternoon, we have five groups to hear from and we are in a very tight time frame. I would urge members to consider that, because we do not want to cut the last one or two off because we have been self-indulgent on the first two or three.

Let us proceed with the first group, Liquidus Ltd. Mr. Blackwell is here and his brief looks like this. If you would take a seat here, Mr. Blackwell, we will be pleased to hear your presentation. Be seated and make yourself comfortable.

LIQUIDUS LTD.

Mr. Blackwell: I would like to make sure, first of all, that you have some of my copies, which are not all that great but they are legible. I believe there are six specific items there: the brief I intend to submit; the outside cover copy of the Standard Transportation Commodity Code Tariff STCC 6001-N; a copy of item 110 in the STCC book; some copies of pages from the Condensed Chemical Dictionary; a copy of item 29 in the STCC book; and a copy of an article about the High Court of Justice of Ontario, which I will get to at a later point.

First of all, I would like to say that I have never appeared before a group of people such as yourselves, and if I appear to be nervous or inept in the manner in which I handle things, I apologize. Having said that, I am here today to talk about Bill 150 and, more specifically, petroleum products, petroleum derivatives and petrochemicals in tank trailer equipment.

The word "petroleum" is an English word made up of two parts, as follows, according to the Oxford dictionary. "Petro" is derived from Greek, and the Greek meaning is earth; "oleum" is derived from Latin, and the Latin meaning is oil--hence the English word "petroleum."

One of the problems we have here is the fact that in the majority of instances the commodities named in the STCC book relate to one commodity and one commodity only. When you say "petroleum," you are saying well over 700,000 named commodities in that one word. Our company has a serious problem, as do other companies, with the type of terminology we have for a public commercial vehicle and then converting it to the STCC book. If we take the terminology of the STCC book, item 29-1, this is the only section that comes remotely close in so far as a category range is concerned.

As you will see by the photocopies I have given you, in item 29-1 in the STCC book, there are about 80 named commodities. They range from petroleum or coal tar products to products of petroleum refining. If you count them, there are roughly 80. Here is where we differ drastically. By any chance, would there be a chemist in the room, so that he might prove me?

Mr. Chairman: Chemists tend not to run for political office. I do not think there are any here.

Mr. Blackwell: I would like to go back to the statement I made to you earlier regarding petroleum products, derivatives of petroleum and petrochemicals. As I said, they represent over 700,000 named commodities, and in the STCC book we have approximately one one hundredth of one per cent. Please see the Condensed Chemical Dictionary. The copies I have given you are more or less the highlights. This is where I am deriving my information from.

One of the reasons I oppose the STCC book is the judiciary, the Ontario Highway Transport Board and the PCV inspectors, regarding interpretation if a number is not there. There are new commodities being developed all the time, but under STCC 29-1 there is no petroleum refined product marked "petroleum refined product NOIBN." By that, I mean you have approximately 80 commodities in the STCC book under item 29 but nothing to catch whatever is left. By virtue of petroleum NOIBN, "not otherwise indexed by name," you would pick up all those.

What that means is that under item 29 they have a name and a number. Multinationals, transport corporations that have wide-open bulk products and/or bulk liquid commodities, whatever the case may be, haul these products without having to apply to the OHTB, compared to an organization such as ours, which would be automatically disqualified because everything would be numbered--either that, or go to the time and trouble of getting the authority.

Please do not take me wrong--I am not trying to muddy the course--but if the judiciary reads the STCC book item 29-1 literally, it will mean loss of jobs and the very possible closing of our business, as I know it will affect other small businesses.

The word "petroleum" as shown in the Oxford dictionary includes anything and everything derived from the earth. To name a few, we have grains, flowers, edible foods, trees, shrubs, weeds, crude oil, etc. Those things have a multitude of uses, but one thing is for certain, they are all derived from the earth. The application of these commodities might be the same, but the derivation is the same; they are from the earth.

There are several issues I have tried to highlight: namely, disparity in the range of commodities under the heading of petroleum between existing PCV authority and the STCC book, item 29-1; literal translation from existing PCV authority to the STCC book as far as the judiciary is concerned; new commodities where the large multinational corporations do not have to go

through bureaucratic red tape versus the small carrier with commodities named, numbered and itemized; and what really will take place if it continues, which will be a loss of jobs and possibly our company.

I would also like to make mention of a publication put out by the Ontario Ministry of Energy. It is a chart, and it shows the alternative fuels or potential of transportation fuels, which I find quite interesting.

Further, I would like to make reference to a decision of the High Court of Justice of Ontario by Mr. Justice Reid, wherein he stated:

"Courts have traditionally, in circumstances where there is doubt, interpreted licences broadly in favour of the licensee, on the ground that the licence is in itself restrictive and should therefore not be interpreted restrictively. Thus, where a word of broad meaning has been used, there is not general warrant to interpret it narrowly."

I am talking, of course, about petroleum commodities.

I would like to take a moment to go through the copies of the Condensed Chemical Dictionary, if we have a moment.

Mr. Chairman: You will not get too technical on us now, will you, Mr. Blackwell?

Mr. Blackwell: All right. They are there, I have underlined them, I will leave them the way they are. They say an awful lot, as I see it. It shows you in there that there are more than 700,000 petroleum products. It goes into some other things, but I will not bother. I was going to make mention of some of the things tankers do, but I do not know whether we have time for that.

Mr. Chairman: Could I ask you a question?

Mr. Blackwell: Yes.

Mr. Chairman: You make specific reference to Bill 150, of the three bills. Will these bills alter the transportation rules for petroleum products?

1600

Mr. Blackwell: I am under the interpretation that the STCC book is all part and parcel of the rewrite and is, therefore, part and parcel of the Truck Transportation Act.

Mr. Chairman: So that is what would be changed?

Mr. Blackwell: Yes. What my concern is and what we are looking at is that in the STCC book you have approximately 80 commodities named petroleum products. I am saying that is not the case. I am saying, with all due respect to this committee and anybody in the Legislature, that there are over 700,000. Please do not take it away from us. We need it.

Mr. Chairman: I wonder if it would be appropriate to have a response from Mr. Smith of the ministry at this point, Mr. Blackwell.

Mr. Smith: Just a couple of comments to clarify the so-called STCC, defined in Bill 150 as "the Standard Transportation Commodity Code filed with the Canadian Transport Commission." It is a description of commodities

generally used in the railway industry throughout North America. It was adopted by us for application to highway authorities, in order to standardize the descriptions.

Whereas today we have a variety of descriptions of various authorities, which tend to reflect the applicants' words, we wanted in future to have a standardized method describing the authority. We adopted this code. The advantage is that the code is continually updated to include the new commodities that may come on the marketplace, so we have an easily updatable, ongoing code.

In applying it to goods moved over the highway, we have modified the code where necessary to cover commodities that were not adequately described or where the description was too limited. Whereas the STCC will be generally used, there will be a few cases where we will modify the words to cover the on-highway situation. I am not aware or had not previously been aware of this issue with your industry. If the words we are now using from the STCC book, and the book is quite a thick pile of paper, are not adequate in describing what the industry does, there is room to modify that description.

The legislation refers to the STCC. It is not covered any further in the bill in terms of the details, nor is it covered by regulation. It is simply the guide we use, but it is not rigid; it can be varied. We do want to reflect what in fact is carried on the highways.

Mr. Chairman: What about the question of whether there is more monitoring of these goods now? Is there more monitoring now or less monitoring now or no change, as a result of these petroleum products that are not listed in the STCC as Mr. Blackwell indicated?

Mr. Smith: Again, I have not looked in detail at the problem you are describing. As I understand what you are saying, the STCC tends to lump a broad range of commodities under the word "petroleum." Is that correct?

Mr. Blackwell: They only list 80. If I might further that answer--am I allowed to do that? On this copy, item 110 in the STCC book, which is the index, there are about 30 or 40 sections or categories. I have itemized the ones that have petroleum in them. If we take the first group, farm products, there is anhydrous ammonia and nitrogen fertilizer solution. But we have 1, 8, 11, 13, 20, 21, 22, 23, 24, 26, 28, 29, 30, 31, 32, 36, 39, 40, 49 and 50. There are petroleum products in each and every one of those.

They are so great, there are hundreds upon hundreds, and I do not think you want to belabour the fact. That is why I was rather hoping we might have a chemist. A chemist would be able to tell you precisely and unequivocally what the position is. Hence, you have products in the whole scope of things and item 29, as I see it, is not a fair representation of petroleum products as we know petroleum products, because I can take just about anything in this room and relate it to petroleum products.

Mr. Chairman: What would you do to resolve what you regard as the problem?

Mr. Blackwell: I do not know what the railway problems are with regards to STCC 6001-N, but if you had a position in there under item 29-1 that read, "petroleum products NOIBN," you would have it covered: "not otherwise indexed by name" covers the ones that are not listed.

Mr. Smith: We are willing to consider it.

Mr. Chairman: It seems to me you have been very persuasive in your presentation, Mr. Blackwell. We are going to take a serious look at that and see if that could be done.

Mr. Blackwell: I would appreciate it.

Mr. Chairman: It is a bit technical, but I really appreciate your coming before us. It has not been raised before and I will be surprised if it is raised again during these hearings, so I think you bring an important point.

Mr. Blackwell: The only reason I raise it is because that is the way our licence reads and it is what we live by.

Mr. Chairman: Yes, we understand that. Thank you very much. We will keep your card and make sure that people are in touch with you as to whether or not this change can be effected and how. Perhaps you can have a word with one of the gentlemen here.

Mr. Chairman: The next presentation, which is being distributed in the blue cover for members, is from Westburne Industrial Enterprises Ltd., Mr. George White.

WESTBURNE INDUSTRIAL ENTERPRISES LTD.

Mr. White: Perhaps a very brief introduction as to what Westburne is. Westburne has become the largest distributor of plumbing, electrical and air-conditioning products in Canada and has had a very rapid growth. Whereas in 1963, we did \$1 million, this year we will do \$1.5 billion in Canada. We employ about 4,000 people in Canada of whom over 2,000 are located in Ontario. We operate over 100 warehouses and distribution centres in Ontario.

We spend somewhere between \$35 million and \$40 million annually on transportation, so any legislation that is going to become effective within Ontario certainly impacts on our ability to get our products to the market. We are a distribution company and distribution is of considerable importance to us.

Westburne generally supports--I suggest we could use the word "supports" strongly--the thrust of the proposed Bill 150, but we would urge some changes that we think will help bring some of the inefficiencies out of the transportation system. It is our understanding that that was the purpose of the new legislation initially, to wring some of the inefficiencies out of the system.

If I can just refer to the inefficiencies we are talking about, Reese Taylor, the former chairman of the Interstate Commerce Commission, in a brief that your ministry has, estimated to the federal government that the savings to the users of the transportation system in the United States would be \$20 billion to \$50 billion. Consequently, we are looking at \$2 billion to \$5 billion in Canada of which more than likely \$750 million to \$1.5 billion will flow to the users in Ontario.

1610

Our primary concern with the flaw in the proposed legislation is the fitness test that is going to have a public interest test associated with it

for a minimum period of five years. At the outset, I would have to suggest that initially, until mid-1981, I was not a supporter of deregulation of the transportation industry. After I had spent considerable time in the United States with truckers, users of the system and legislators, it became quite apparent to me that the benefits certainly outweighed any of the disbenefits. Consequently, we should look very seriously at similar legislation in Canada.

Some of the testimony and presentations that have been heard previously suggest that if we had a deregulated transportation industry in Canada, it would perhaps cause chaos, both from an economic standpoint and from a safety standpoint. Any of the information I can generate with respect to economics suggests that the companies which publish financial statements in Canada--I will use CP Transport as an example.

When I look at its last five years' earnings, 1981 to 1986, and relate its net income to earnings--I will distribute this information to the committee--it earned 1.18 per cent of revenue as net income. If I look at our own corporation--and we think we are doing quite well in Canada; we are not asking for any additional government legislation that will improve our profitability--on operating revenues during the same period of over \$6 billion, we earned \$80 million or 1.29 per cent.

I will go one step further and refer to the George Weston Ltd. financial statements. For the periods 1984 and 1985, George Weston earned 1.08 per cent and 1.14 per cent and, in 1986, it made an amazing 1.18 per cent, precisely the same as CP is earning at the present time.

Representatives of the trucking industry, in some of the testimony I have heard, previously suggested they would like an operating ratio of 95. An operating ratio of 95 would earn them somewhere in the neighbourhood of about three per cent after-tax profits which we would like to have as well, but it just is not there.

I will distribute this as well. This is on Yellow Freight Systems, an American carrier, post-deregulation, 1981 through 1984. I do not have the 1984 and 1985 financial statements. During this deregulated period, Yellow Freight Systems earned 3.16 per cent of operating revenue as net earnings. It earned virtually three times as much as was earned by the Canadian carriers, who are concerned. I suggest the American experience indicates that, after deregulation, they can earn more money than they can during the period we have gone through in Canada.

When we talk about safety, I and most other responsible shippers and carriers in Ontario completely support the thrust of the safety regulation that is being proposed within the province and on a national basis. Perhaps we would like to see a uniform set of regulations, but Ontario has taken some very progressive steps towards what we consider a thorough safety approach.

There has been some suggestion that, because of deregulation in the United States, safety has suffered. I heard previously, referring to the Ontario Trucking Association presentation, about the California experience. Just to bring the committee up to speed, there has been a new bill introduced in California to eliminate the most recent reregulation. They claimed that previous statistics were misleading. The real reasons for the reduced safety were deteriorating truck safety by increased truck miles, greater urban congestion and a crumbling highway infrastructure.

There were no safety recommendations from the California investigation

84.05.048. There were no safety recommendations that flowed from that report whatsoever. However, as part of that recommendation, the only part I can read into the California report, their findings on page 98 stated, "In addition to a compatible regulatory environment, many factors contribute to the level of highway safety, including carrier and shipper commitment to safety, overall economic conditions and enforcement of safety programs." Certainly, I support that proposition, as have virtually all the consultants who have responded to both the province of Ontario and the federal government vis-à-vis safety.

One of the other concerns relates to the ability to tie safety and deregulation together in Ontario. My observation, in review of what has happened both stateside and here, is that there is no relationship. In essence, in Ontario we have not had a regulated pricing mechanism since 1963. We have had rate filing since 1963 that was not enforced. I am not aware--perhaps in 25 years there may be one conviction. In essence, the shippers and carriers made their own deals. Some of them were filed; others were not filed. Generally speaking, the marketplace dictated what the costs would be.

It is my observation, once again--and it is supported by all of the consultants' reports I have read, both provincial and federal, on the extraprovincial--that under deregulation nothing is going to change. The situation we have in Ontario is different from British Columbia and Quebec, where they were completely regulated. We have had a deregulated pricing environment for 25 years, so with deregulation nothing is going to change on the truck side. On the rail side, certainly there will be changes. We will have secret contracts, volume discounts, etc. However, on the trucking side, we have already gone through 25 years of this. Consequently, there should be nothing new.

For example, there is a US consultant, Economics and Consulting Management Ltd., which studied the first six years of deregulation and could not find a link between safety and deregulation. They have completed a very in-depth report. Rather than some broad observations, it is a documented report, and they find no relationship between safety and deregulation.

The Department of Transport in the US has also studied the last five years of accident records and, related to miles, there is a decreasing relationship between accidents and the number of miles covered. Once again, there does not appear to be a direct relationship between deregulation and safety. I would assume in any business, whether it be the trucking business or any other business, that times get cut. Everyone cuts back somewhere or other. Certainly there is a very definite commitment to safety.

I will make just one other comment on safety. In the OTA's presentation on safety, they said there did not appear to be a firm commitment by US carriers with respect to safety. In the annual report of Yellow Freight Systems, once again, there is a full page, a commitment to safety:

"Yellow is totally committed to offering quality transportation services in a safe, reliable manner. Yellow's safety department also conducts training sessions to update drivers on defensive-driving techniques and safe working practices. To supplement this training program, a safety training trailer began travelling to the hubbing terminals during 1984. This trailer is equipped with videocassette programs, etc."

There is the same commitment to safety in the United States that there is in Ontario. It is my understanding that many or most of the major carriers

in Ontario have had recent reviews by the Ontario Highway Transport Board regarding their safety applications. During the last five or six months, most of them have been called up to have their licences reviewed because of safety infractions.

Does this mean, prior to deregulation, we have a safety problem that cannot be corrected? I do not believe so. Responsible transportation companies in Canada, responsible transportation companies in the United States and we in the private sector who operate over 60 per cent of all the trucks on the road have a commitment to safety that certainly is not going to change with deregulation.

1620

If I may relate to intercorporate hauling, a number of years ago, we in industry were able to have Ontario become the first province to permit intercorporate trucking. At that time, after consultation with the various ministry people and the minister, 90 per cent was arrived at as an acceptable figure. We and the OTA hashed that back and forth.

If we look at what is happening in some of the adjoining provinces and in the Maritimes, they are down to 50.1 per cent. It would seem to me that people who are operating intercorporately between Ontario and Manitoba cannot go beyond the Manitoba border, if Ontario does not change in the near future, if they own between 50.1 and 90 per cent of corporate stock. This is something the ministry should have a good look at.

The last area of interest or concern is with respect to the publishing of tariffs. Since 1963 we have had rate filing in Ontario. I do not think that I, people within government or the trucking industry felt there was ever any policing of the publishing practice. Under the new proposed legislation, there does not appear to be any mechanism to police what is being proposed. If, in fact, there is some rationale that I cannot read into the legislation, it would seem to me that the proposed legislation on publishing of tariffs is redundant and should be eliminated.

In summary and conclusion, we recommend that the fitness test should not be supplemented by a public interest test. The fitness test only should become effective prior to January 1, 1992. If Ontario industry wishes to expand, the Goodyears, etc., are allowed to get out and make a reasonable rate of return on investment, we do not need a public interest test. I do not believe we need one at all. If we go beyond three years, it is a mistake.

We also recommend that the minimum level of corporate control for intercorporate trucking should be reduced to 50.1 per cent and that the tariff publishing requirements, as I suggested, are redundant and should be withdrawn.

Thank you for allowing us to make this presentation.

The Acting Chairman (Mr. South): Thank you, Mr. White. We have a question for you.

Mr. Pouliot: Welcome, Mr. White. It is a pleasure, indeed.

You mentioned, sir, in your prelude that until 1985 you were opposed to deregulation.

Mr. White: 1981.

Mr. Pouliot: Why were you opposed?

Mr. White: I thought we had a reasonable transportation system in the province. I looked at what they had under their previous regimes, I looked at what happened in other provinces and I did not feel Ontario was doing that badly.

Mr. Pouliot: Until that time?

Mr. White: Yes, until that time. It was only after spending a considerable amount of time with truckers, industrial people and legislators in the United States that I felt that any of the disbenefits were certainly outweighed by the benefits that should flow through.

Mr. Pouliot: Has the present transportation system, the rules governing transportation as we know them now, been a deterrent to your business?

Mr. White: Let me give you an example. It is most likely as good an economic example as we can give.

We do not manufacture anything. We can buy from any supplier in Canada or the United States. All we do is bring it in and redistribute it. We have two major manufacturers of a specific type of product. I will not mention the companies' names. There are only three of them in Canada, one in Quebec, one in Hamilton and one in southwestern Ontario. We get about 168 of these units in a trailer and, therefore, they are quite freight sensitive.

Historically, the two Ontario suppliers have enjoyed all our western Canada market. We now find that a supplier in Knoxville, Tennessee is able to distribute his product to western Canada. He has about 50 per cent of our western market now. A significant portion of it relates to better transportation from the United States into western Canada. So that explains it. Within Ontario, it more than likely does not impact as much. The greater the distance, the greater the impact on a corporation such as ours.

Mr. Pouliot: Would it be fair to assume, then, it would enhance your already very spectacular--the Report on Business in the Globe and Mail would perhaps call it astronomical and unprecedented--increase from \$1 million to \$1.5 billion in 25 years?

Mr. White: We bought a few corporations along the way, none since last Friday. Certainly there is a great deal of internal growth, as well as external.

Mr. Pouliot: What strikes you when someone mentions publishing of rates?

Mr. White: In Ontario? Nothing.

Mr. Pouliot: So, actually, it really matters little.

Mr. White: That is not the problem. Rate publishing has been nonexistent. People have done virtually what they have wanted. Carriers and shippers have made deals for 25 years.

One of the problems--and I will be very frank--is that our corporation has a policy. We abide by the laws. If we cannot do it legally, we will not do

it illegally. Any rate a carrier proposes to us must be filed. He has to say he is going to file it. He has to file the rate. Where it would affect us is if we were competing with a competitor who has a lot of under-the-table deals that we cannot get our hands on. We have an idea what they are, but we are not precisely certain. However, this has been going on for 25 years, and you live with it.

Mr. Pouliot: Maybe I will live long enough--I have a couple of brief questions, but this is a comment--that one day sitting right here, I may find a corporation that says, "No, we do not abide by the rules or the laws of the province." But you follow the norm, I suppose.

Would you be opposed, if it is inconsequential and means so little to have the publishing rates--

Mr. White: Everybody publishes something.

Mr. Pouliot: What about just having them on file, then?

Mr. White: What we are here for today is to look for equity, or a level playing field. If they are going to publish rates and they are going to request that they be filed, then we say, "Put some enforcement into it." In other words, do not file them if they are just to take up paper space. Computers can do it now. There are a million ways of doing it.

I cannot see any reasonable reason for publishing rates today. They do not mean anything. One of the problems you have is carriers going bankrupt. An auditor comes back later on, saying you owe him \$200,000 because you did not pay the rates on file. Rate filing or rate publishing, unless it is enforceable, does not make any sense.

Mr. Pouliot: There are, by way of information, a great many discrepancies, which you have mentioned, Mr. White--

Mr. White: My which?

Mr. Pouliot: --discrepancies between the regions. I come from the north, and so do Mr. Bernier and Mr. Pierce. When the deals are made--not that we are suspicious--we just like those things to be kept on file to establish comparisons at a later date. We do not see anything negative about this.

Mr. White: We are one of the few corporations with a series of locations right across northern Ontario: Kenora, Pembroke, Thunder Bay. You name it, we are there. Certainly, we are concerned about the cost of moving product in northern Ontario. There is no question about it. But rate publishing is not the answer.

Mr. Pouliot: I have one final question. The first recommendation in your summary is that the fitness test should not be supplemented by a public interest test. Yet, what we have, in terms of intent and spirit in the wording, the framing of the proposed legislation, is a reverse onus basis, where the public interest test is no longer the order of the day. If you are fit, willing and able, you serve the purpose only where you can satisfy that the public interest will be in jeopardy, and only for a period of five years, to break in the legislation.

Mr. White: Perhaps I would have had some sympathy for that position, until we spent time with a number of lawyers we engaged. There is no basis at law that the public interest test will kick in the way you are describing.

For example, for the last 50 years in the province, the Ontario Trucking Association has virtually opposed every application for general merchandise or any other licence that has been put forward. Under this scenario, what happens if they oppose every application, both fitness and public interest? Is someone awarded costs to stop this practice? There is no mention of this in the legislation. Our concern is that what is being proposed does not have the safety net in it that would make me feel comfortable.

1630

Mr. Pouliot: I see. Thank you.

The Acting Chairman: Are there any more questions of Mr. White?

Mr. Bernier: What is your trucking company's name?

Mr. White: We are not in the trucking business. It is Westburne Industrial Enterprises Ltd. We distribute electrical, plumbing, air-conditioning. We have a couple of branches up in your location.

Mr. Bernier: You do?

Mr. White: Yes.

Mr. Bernier: I do not recognize the name. That is why I asked.

Mr. White: Up there we operate under either Amesco--it could be engineering and plumbing in Thunder Bay--or Nedco in Thunder Bay. Westburne has one branch there but we have a number of divisions. We have 10 operating divisions. Frontier Air Conditioning is another new one.

Mr. Pierce: I have a couple of questions, Mr. White.

Do you do any of your own trucking?

Mr. White: Yes, we do.

Mr. Pierce: Highway trucking?

Mr. White: Yes, we do.

Mr. Pierce: Interprovincial?

Mr. White: Yes, we do.

Mr. Pierce: What would the ratio of your truck fleet transportation of goods be in comparison to what you hire? Do you have any idea?

Mr. White: It is just a ball-park guess: in Canada, which would apply in Ontario, maybe five or 10 per cent, maybe \$3 million in private trucking on an annual basis.

Mr. Pierce: You mentioned in your brief the positive move that was made in Ontario a couple of years ago in intercorporate hauling. Do you do any of that, personally?

Mr. White: Yes, we do it extensively. Once again, operating on 1.29 per cent of sales, you have to become very efficient. We provide a

distribution service for all the 10 divisions in Ontario. We marshal all other material together and either our truck contract carriers or common carriers are picked to distribute this intraprovincially or extraprovincially.

Mr. Pierce: One of the major concerns of small communities anywhere in Ontario is that with deregulation of the trucking industry, the level of service will no longer be there. Do you see that as a problem?

Mr. White: In answer to Mr. Pouliot's question, that was one of my original concerns in the States. Obviously, we have a good number of locations in what would be considered remote communities: Dryden, Kenora. You name it, we are there. This was a real concern.

Both shippers and carriers, in any of the legislative studies we saw done by the Department of Transport in the States, indicated that service had not become poorer; in most instances it had improved. Now, you may very well go from a company, such as Kingsway Transport, to use a name, where you have a broad blanket. They operate a hub and spoke, where they go into their master terminal and redistribute. What happened down there is that you still have the line-haul carrier, but you may have a small independent providing the redistribution leg for 50, 100 or whatever miles beyond the major terminal.

One other point, with respect to concentration, has been made previously. I listened to some of the presentations last Thursday. This is my 35th year in this business--I was a very young "introducee." Back in the mid-1950s, Motorways was acquired by a British firm. Over the last 35 years we have just had one series of corporations, American, Australian, or whatever, continuing to buy out other corporations.

I will make one comment here on corporate concentration. I will use Alltrans as an example. Generally speaking, I do not think Cam Carruth fully supports deregulation. This is my reading of Cam, who is chairman of Alltrans. They are Australian. Their first purchase in Canada was Gill Interprovincial: that got them between Toronto and Vancouver. They bought some other western carriers.

They then bought Western Freight Lines in southwestern Ontario and Overland Express in southwestern Ontario. More recently, they bought Dominion-Consolidated, which in itself is a merger of Dominion Freight Lines and Consolidated Freight Lines, which bought out Martin's many years previously. They bought Champlain Sept-Iles Express to get them into Quebec and they bought Railfast, a western Canada pool car operator. This is concentration.

We look at Reimer buying Inter-City, competitors of one another to western Canada. Motorways and Direct Transport is the same thing. CP Transport really is not CP Transport. It is the Strath-Dee, the little company that used to run up through Aurora and Newmarket to Lake Simcoe, Deluxe Dent, CP Express, etc. We look at Canadian Freightways, which is really Consolidated Freightways from Menlo Park, California, which bought Penn-Yan and a number of other small companies.

Yellow Freight has bought International. Day and Ross bought Canadian Great West. Consolidated Fastfrate, the pool car company, reversed itself and bought Kingsway, which is a merger of many. So, for someone to say you are going to see concentration--I agree once again with all your consultants and the federal consultants--we have had consolidation and concentration and foreign ownership for the last 35 years. I do not think it has done any harm.

I think it has done good. We have an excellent type of carrier in Ontario. There is a good level of service.

As we suggested at the outset, the only concern is the five-year period. It is not needed. The carriers are earning more than people in industry. Just go back to your preamble about what the legislation is about: "It is hereby declared that an effective goods movement system by highway is essential to advance the interests of the users of transportation." We are the users. The carriers are making more than we are in Ontario. The American carriers are making three times what we make. I cannot understand the requirement for a five-year period. It behoves me that we need five years.

Mr. Pierce: You may have seen some of the submissions by Manitoulin Trucking Inc. and by Groupe Robert Inc. trucking.

Mr. White: Yes.

Mr. Pierce: Their major concern, of course, is that if you deregulate the trucking industry, you will have a saturation of larger companies coming in, taking the cream off, taking the full load freight out of the country, and leaving behind the package goods and small goods freight. Particularly in Manitoulin's case, they see themselves as getting into a position where, with deregulation, it would in fact be their demise. They would end up being bought out by a larger company, and service would be diminished.

Mr. White: Well, I would suggest to Manitoulin that we go back and find out where it came from. Once again, that is a consolidation. We use Manitoulin. I know a little about Manitoulin and I do not share its concerns. Competition in the marketplace, our marketplace or their marketplace, with a deregulated environment is going to be good for the people in northern Ontario.

For many, many years we wondered why people running from Winnipeg through to Toronto could not stop off at Dryden, Terrace Bay or wherever to bring stuff back. It did not make any sense then. It does not make any sense today. It is bad for the province. We have to allow our industry to become more competitive. This is one method of doing it. If people can make a dollar--

Mr. Pierce: Do you see a lessening of the barriers, interprovincially, or an increase in the barriers being structured against us in Ontario?

Mr. White: No. If we have increased entry on a fit, willing and able basis, so that people can come in and make a dollar out of the trucking industry, they are responsible, they will abide by the safety laws, they are good corporate citizens, they will establish an infrastructure in Ontario. I think it has to be good for both the trucking industry and good for the users.

For example, it was not too many years ago when I spent a good number of hours at the Ontario Highway Transport Board listening to the UPS hearings. We were one of the few people who appeared as witnesses because we thought it would be good for the province. UPS has created a new industry in Ontario. They are excellent corporate citizens. Canpar, CP's competitive division, has prospered and is more than likely one of the most prosperous divisions within CP. There have been a broad number of small couriers get authority and they are now in the business.

I see the same kind of thing happening if we have the fitness type

application. Maybe three years, which was proposed previously, is a long enough period to allow everyone to make all the adjustments. Karl Wahl, in his annual report, as I have suggested, has already said, "We are ready." I talked to John Kennedy, who has just left as president of Kingsway. He is ready. All the people I talk to, the chief executive officers, tell me they are ready. The Canadian Trucking Association at the last Canadian Conference of Motor Transport Administrators meeting said, "Let us go." Everybody is ready and ready to go. Who is opposed to it?

Mr. Pierce: The thrust of the OTA's proposal, also in their submission, was that it was in favour of deregulation.

Mr. White: Well, let's go. Let's get rid of this public interest test.

The Acting Chairman: Thank you for your presentation, Mr. White.

Next is the Canadian Transport Lawyers' Association, Mr. Zimmerman.

CANADIAN TRANSPORT LAWYERS' ASSOCIATION

Mr. Zimmerman: Good afternoon, Mr. Chairman and members of the committee. If it pleases you, because I am here in a representational capacity rather than in my personal capacity, my brief is brief and I would prefer to read it.

The Acting Chairman: Fine.

Mr. Zimmerman: I have practised law in Ontario for 33 years and have continuously been engaged in matters in respect to regulatory tribunals, here in this province, the Canadian Transport Commission, and across the country, dealing with motor transport regulation. I am currently the Ontario director of the Canadian Transport Lawyers' Association.

The association was formed in 1979 to bring together practitioners in the field of transportation law, principally highway transportation by truck and bus from across the country, in the interest of continuing education and to keep abreast of developments in transportation regulation and practice before the several regulatory tribunals in each province. We have members in every province, the Northwest Territories and the Yukon. At present, there are 43 members of the Ontario bar who belong to the association.

Increasingly since the early 1980s, as the reregulatory process got under way in the several provinces and federally, our attention has been directed to the consideration of the new regulatory schemes proposed by the several provinces and the federal government. We have in this regard, for example, at the invitation of CCMTA, presented a brief to it at its annual meeting each year since 1981.

While many of our members have strong views about the advisability of the relaxation of the control of entry provisions of the governing statutes which is central to the new regulatory schemes in all provinces and federally, we adopted and have adhered to a policy in our representations to governments, both provincial and federal, of commenting on proposed legislative schemes in circumstances where we consider that our views may assist those charged with developing the legislation to ensure that the proposed scheme is easily understood, administratively convenient and procedurally fair.

You received on Thursday last a brief submitted by Dean Saul of Strathy,

Archibald and Seagram, a past president of our association, whose firm includes a number of other members of the association. The Ontario section of the CTLA unreservedly supports Mr. Saul's brief and wish to add, or more correctly, emphasize our concern with certain matters discussed in that brief.

First, section 9 of the Truck Transportation Act, the public interest section, may well be illusory and afford no relief to the industry unless the applicant provides the minister, in the first instance, with a meaningful business plan disclosing the proposed scale of the intended operation, against which the potential respondents can measure the probable impact upon their operations and their continued ability to provide a satisfactory service at reasonable rates in the public interest.

Failing such a plan, no respondent or group of respondents could meet the threshold requirements, before a hearing is ordered, of satisfying the board in writing that the grant of authority will have a significant detrimental effect on the public interest, in that there may be an adverse impact on the matters described in section 10 of the act.

To give you a simplistic example, if the applicant proposes to operate a general freight service, less-than-truckload service, on the lane Toronto-Windsor, serving all points en route, and proposes to put 10 trucks into that service, it is unlikely that the scale of operation would so fragment the available traffic as to cause the existing carriers serving the lane to cut back on service levels, raise rates or both to compensate for the diminished volumes available to them, but if the applicant proposes to put 100 units into that service, the result might be very different.

We would also like to draw to your attention the fact that while in the Truck Transportation Act, section 9, the threshold requirement is defined as "will have a significant detrimental effect on the public interest," the federal act and the proposed statutes in the other provinces use the words "is likely to be detrimental."

The difference in wording is not merely semantics. If uniformity is desirable, it puts Ontario out of step with the other regulatory schemes, both federally and provincially, and will make it easier for carriers from other jurisdictions to obtain domestic authority in Ontario than for Ontario-based carriers to obtain authority in those jurisdictions.

It also raises a difficulty where a carrier seeking both intraprovincial and extraprovincial authority in Ontario might be faced with a public interest hearing with respect to his extraprovincial application but, given that the higher threshold will have a significant detrimental effect in the Ontario act, would face no public interest test in relation to its domestic intraprovincial Ontario application in circumstances where the carrier's business plan depends on the linkage between his proposed intraprovincial and extraprovincial operations.

I should also like to comment, in passing and parenthetically, that in the truck transportation scheme where the requirement of satisfying the board in writing is "will have a significant detrimental effect" as opposed to "is likely to be detrimental," we have a problem in that the board, in the first instance, having determined that it "will have"--positive--is faced with a problem when it comes to the second stage, the hearing. They have already determined that it "will have." "Likely to be detrimental" is more appropriate, because when you pass that threshold and come to the hearing, the boards can say, "After having heard all the evidence, we are satisfied that it

is not likely." Having made a positive determination of "will," you are going to have a problem in the second step.

Second, we want to underline our very real concern at the continued authority of the registrar under section 30 of the Highway Traffic Act. Mr. Saul comments thereon at tab 5 of his brief, which was filed last Thursday. Shortly put, it amounts to the umpire playing in the ball game. With the greatest of deference to the registrar or his assistants who preside at these reviews, it is impossible for them to sit judicially and consider only those matters which are set out in the notice of cancellation which prompts the hearing, at which the reviewee is required to show cause why his licence should not be cancelled or suspended, when in their administrative capacity they may and do have knowledge of other matters affecting the same carrier which may have an impact on their disposition of the matters before them.

The courts have had occasion to deal with this phenomenon. In a recent case in Ontario, Campbell versus the Attorney General of Ontario, which dealt with the court's right to review the Attorney General's discretion in staying the further charges laid in the Morgentaler matter, Mr. Justice Craig quotes the following passage from the judgement of Chief Justice Monnin of Manitoba in *Re Balderstone and the Queen*, at page 221:

"The judicial and executive must not mix. These are two separate and distinct functions. The accusatorial officers lay informations or in some cases prefer indictments. Courts or the curia listen to cases brought to their attention and decide them on their merits or on meritorious preliminary matters."

It is interesting to note that leave to appeal this judgement of the Manitoba Court of Appeal to the Supreme Court of Canada was refused.

Procedural fairness, in our view, dictates that where such a serious matter as cancellation or suspension of a commercial vehicle operators registration is the issue, the registrar who proposes the cancellation should not be the person who disposes of the matter after a hearing. We believe the Ontario Highway Transport Board is the proper forum and the registrar's review powers ought to be assigned to it.

Parenthetically again, it strikes us as strange that where a question of the cancellation or suspension of an operating licence under the new Truck Transportation Act is involved, that is, for a for-hire carrier, the reference by the minister is to the board, and there are certain extensive procedural safeguards as to the fairness of the proceedings in those circumstances. But where an equally serious penalty, that is, the cancellation or suspension of a CVOR, is involved, it goes to the registrar without the procedural safeguards which the draftsmen of the legislation thought were appropriate in the case of the cancellation or suspension of an operating licence.

1650

Third, at tab 4 of Mr. Saul's brief, he discusses enforcement of the new act in relation to the Charter of Rights and Freedoms, with particular reference to section 22 of the Truck Transportation Act, which provides for the detention of vehicles in circumstances where "an officer is of the opinion on reasonable and probable grounds that the vehicle is being operated in contravention of subsection 3(1) of the act."

This is before any charge has been laid. This is before there is any

conviction. This is when he stops a truck on the highway. He has the authority to detain the vehicle. If you read the sections carefully, he can only release the vehicle when the person whose vehicle has been detained has made a \$5,000 deposit, which is to be held for six months or until the prosecution has been completed. Then, if there is a successful prosecution, he gets his \$5,000 back less the fine. If he is acquitted, then he finally gets his \$5,000 back.

Mr. Saul stated that the provisions of that section are "almost certainly offensive to section 8 of the charter." We would like to draw to your attention the fact that a similar provision contained in the Motor Carrier Act of the province of Newfoundland has already been found to be inconsistent with section 8 of the charter.

In an unreported decision in the trial division of the Supreme Court of Newfoundland, dated February 10, 1986, cited as Rock Island Express Limited and the Board of Commissioners of Public Utilities, Mr. Justice Goodridge had to consider the detention of two tractor trailers of Rock Island Express under subsection 34A(4) of the Newfoundland statute, which provides for the detention of vehicles by inspectors appointed by the board and concludes with the words, "vehicles so detained remain so until the owner or operator has complied with the provisions of this act or the regulations."

In his judgement his Lordship said: "This type of power is as contrary as any legislation can be to section 8 of the charter--the right to be secure against unreasonable seizure. There is no need to refer to the jurisprudence on this section of the charter. The offensive nature of the concluding language of subsection 34A(4) is clear on the face of it and it must be held to be of no force and effect."

Fourth, at tab 3 of his brief, Mr. Saul discusses the question of the transfer or, more properly, the nontransferability of operating licences under the Truck Transportation Act. While we have no quarrel with the principle that there should be no monopoly value in a licence, there is both a timing problem and a qualitative difference where an existing licensee proposes to sell its business as a going concern either by sale of its outstanding shares or by the sale of the assets of the business as a going concern in seeking in its own right to obtain licence authority which mirrors the licence held by the vendor on proof of fitness, etc., under the new act, as opposed to an applicant who is a new entrant. We echo Mr. Saul's submission that section 6 of the act, which sets out matters that are to be considered on a fitness hearing, ought to be amended to reflect the reality of a business acquisition.

Further, in respect to the question of transfer of control by way of share transfer, it is clear from the act that fitness of the owners of a motor carrier undertaking is central to the scheme. Yet, unlike the present federal act and the Quebec statute, to name but two, the new act, like the present Public Commercial Vehicles Act, overlooks change of control by purchase of the shares of an upstream holding company which, in turn, owns all or a controlling interest in the shares of a licensed carrier.

Just a few recent acquisitions which did not come before the board under subsection 9(6) of the present PCV act because the purchaser bought the shares of the vendor's upstream corporation or corporations, are: Yellow Freight Systems purchase of I.C.L. International Carriers Ltd., Motorways purchase of Direct Transportation Systems Ltd. and Reimer Express purchase of Inter-City Truck Lines Inc.

In our submission, in the light of the express purpose of the new act, section 5 should be amended to include such transactions.

The Acting Chairman: Thank you very much, Mr. Zimmerman.

Mr. Bernier: One short question. On page 4, you "echo Mr. Saul's submission that section 6 of the act, which sets out matters that are to be considered on a fitness hearing, ought to be amended to reflect the reality of a business acquisition." Could you broaden that a little for me, please?

Mr. Zimmerman: Yes. I am not sure whether you were here when Mr. Saul--

Mr. Bernier: No, I was not.

Mr. Zimmerman: I think he ran out of time on the subject. Perhaps I could read that in. You have the brief that was submitted last Thursday. This is what he had to say:

"Under the existing system, an operating licence is transferable, subject to approval by the minister pursuant to an OHTB hearing. The intent of the existing legislation in this regard and the practice which has developed is intended to effectively screen proposed purchasers of licences for 'fitness.' Under the proposed legislation, a licence is simply not transferable. Instead, the proposed purchaser of a trucking undertaking must make an application for a new licence in the same way that any person seeking to provide trucking services is required to do. The 'reverse-onus' and 'fitness' provisions of the proposed legislation suggest that an operating licence will be at least as readily available to a purchaser under the new law as under the existing system. A purchaser, however, will no longer have an advantage over others seeking to enter the market.

"One question that will remain within the jurisdiction of the OHTB is, in a share-purchase situation, whether there has been a transfer of the undertaking. The question whether 'actual control' has changed shall be determined by the OHTB pursuant to a hearing. This is an appropriate matter for consideration by the OHTB. This procedure ought to be streamlined by assigning the reporting requirements to the OHTB as well. As it is presently drafted, the TTA requires information to be filed with the minister. It would then be transmitted to the board for consideration, and the board's recommendation would then be transmitted back to the minister. The procedure is cumbersome and unnecessary. Matters of change of control and related issues ought to be conferred unambiguously upon the OHTB.

"More fundamentally, the whole question of transferability under the TTA merits further consideration. We recognize the policy initiative to eliminate a 'market' in licences. As a nontransferable privilege, the licence shall have a value only to the licence holder. In acquisitions of trucking undertakings, the value heretofore attributable to the operating licence shall henceforth be a measure of the goodwill. Nontransferability, standing alone, shall not pose any difficulty to the normal course of doing business. The procedures used to implement nontransferability should also have a neutral effect on the normal course of business. The TTA, as presently drafted, raises at least three concerns.

"First of all, there is no provision to ensure that an existing licence shall not be cancelled until a new licence has been issued to the purchaser of the transportation undertaking. Section 31 of the TTA provides that upon a change in 'actual control' of the licensed company, the minister shall cancel the operating licence. This potential for unreasonable interference in the normal completion of the business transaction and continued operation of the

undertaking ought to be removed. A requirement for the simultaneous issuance of a new licence, pursuant to a fitness hearing, ought to be included in the new legislation.

"Second, it is noteworthy that in an asset transfer situation, the minister's only power to cancel the operating licence is found in section 27, pursuant to which the minister may cancel the licence where the licensee has failed to provide any part of the licensed transportation service for one year. It is submitted that this act should not discriminate between share transfers and asset transfers.

"Finally, the reality of a transfer situation is different from the reality of a new venture. The nature of the fitness hearing must be different in each case in order to be responsive to both legitimate business concerns and stated public policy objectives. The matters which ought to be considered in a transfer type of fitness hearing are surely different from those which may be appropriate to somebody entering the business for the first time. It is submitted that section 6 of the proposed legislation, which sets out matters to be considered on a fitness hearing, ought to be amended to reflect the reality of a business acquisition."

Ms. Hart: I am interested in your statement having to do with the mixing of the two separate functions. I guess they were called the judicial and the executive in that decision. You said the registrar cannot help but mix the two functions. Did you base your statement on experience, or what did you base it on?

Mr. Zimmerman: I and many of our members with whom I have discussed this area have been at section 30 Highway Traffic Act hearings before the registrar or one of the assistant registrars. I will simply give you an example. As you know, the way these things work is that you receive a notice of cancellation of your PCV authority, or of your vehicle registration if you have a non-PCV licence, and you are given an opportunity to call the ministry and say, "We want an opportunity to be heard."

Attached to that notice of cancellation is a list of offences. It will now be a CVOR record, but it is an operating record which sets out a list of offences or violations of the Highway Traffic Act or the Public Commercial Vehicles Act. In the old days, they even had the Lord's Day Act in there. You are to show cause why, on the basis of that operating record, your licence should not be cancelled.

I have been before the registrar on more than one occasion when, after having dealt with what we were to show cause on, why on the face of that operating record our licence should not be cancelled, the registrar or one of his assistants has said--I remember one recent case. After discussing all those items, the assistant registrar turned to my client and said, "Could you also assist me with the three occasions"--and he gave the dates and times--"on which your trucks were held at the scale pending the fixing of some mechanical defect on the equipment?"

1700

On another occasion I was faced with a question, "What about the pending convictions?" I take it he was referring to charges that had been laid where there had been no trial, no conviction and no opportunity to defend ourselves--but "What about the pending convictions?"

My proposition is that, blind justice holding the scales equally, the

registrar necessarily, in his administrative capacity, knows of things which a judge sitting judicially should not know. He is there to consider the subject matter of the notice, which is the list of convictions attached to that notice, and it is simply impossible for an administrator in his administrative capacity--and there have been many occasions that I know of where matters that were not mentioned in the notice of cancellation were brought to the attention of the person appearing before the registrar.

My view is that the registrar, one, should not have known of it, if he was going to act judicially and, two, if he knew of it, he certainly should not have talked about it.

Ms. Hart: One other area, Mr. Zimmerman, is the first one you raised of the difference in language in section 9: the threshold requirement is defined as "will have a significant detrimental effect on the public interest" versus the federal act's words, "is likely to be detrimental." Those words are not exactly the same. Why is it a problem, in your view, if they are not exactly the same?

Mr. Zimmerman: Because under the TTA section 9, to meet the minimum threshold of getting a public interest hearing you must demonstrate in writing to the board that it will have--not it "is likely" but it "will have." That is a higher threshold than "is likely" to have and will create a situation in which the Ontario board sitting on an application, where it involves both intra-Ontario and extra-Ontario, will have two standards to meet. One, "it is likely to," which is a lower threshold and, two, when they deal with the intraprovincial they have to step up their sights a little bit and talk about the higher threshold "will have."

That also creates a problem, as I indicated earlier, if it is likely to be detrimental. It is quite different. If the board decides on a written submission that it will be detrimental, what is the board to do on the hearing? It has already made an affirmative decision that it "will be" detrimental to public interest. Whereas, if you go to the other one, it "is likely to be" detrimental, it is not making a blanket or flat statement that it will be; it is likely or it may be detrimental. When they get to the hearing, the board can say, after having heard all the evidence, "We are satisfied it is not likely at all." But they cannot, in the converse, having found it will be detrimental, say "We have decided it won't be detrimental."

I should point out that there is another equation there in section 9. The board has no jurisdiction even if it were to find it will be of significant detrimental effect on the public interest. The board's jurisdiction under that section of the act is not to dismiss the application but to limit the number of trucks, whereas under the federal statute where the board determines that it is not in the public interest, the board has the authority to dismiss the application.

That is going to create an equal problem in dealing, because the Ontario board will still be dealing with both extraprovincial and intraprovincial applications. In the one case, they may dismiss and in the other case, all they can do is limit and have the licence authority grant it.

Ms. Hart: One question that arises out of what you said--you talk about the change of control by bumping it up one level to a holding company. Could staff perhaps answer for me why this is not covered? Is there some rationale for it?

Mr. McCombe: If you start dealing with corporate structures going up the line, you can end up with the situation, which I find would be a bit strange, of a change of control of the parent company in Australia of an Ontario company that was held by our law to be null and void because it had not got our ministry's approval. I do not see how we can go that far when the shares are trading on the New York Stock Exchange, it is a foreign corporation, and our law says five companies removed is invalid under Ontario law because one of the subsidiaries down the line had an operating licence.

Ms. Hart: But this is not five companies, this is one: one I used to work for, Inter-City Truck Lines. If I were a lawyer representing anybody who wants to transfer a licence, I would say, "Incorporate a holding company."

Mr. McCombe: Yes, that has been the case as long as the Public Commercial Vehicles Act has been in place.

Mr. Chairman: Since you were representing?

Ms. Hart: No, that was in the old days.

Mr. Zimmerman: The section I should point out that never seemed to be a problem with the federal government, the national Transport Act, since its inception, would be section 27. It requires a report to the Canadian Transport Commission in every case, including acquisitions by any means by anybody. Clearly, there have been a number of cases where they insist on attracting the upstream corporation because the upstream corporation cannot avoid the system by insulating itself from the actual licence holder downstream.

Mr. Chairman: Can we move this on pretty quickly, because the people from the Ontario Mining Association are waiting and they get real snarly when they are made to wait? Mr. Pierce and Mr. Pouliot have quick questions.

Mr. Pierce: Mr. Zimmerman, I have a couple of quick comments on Bill 152 and the CVORs. In the companies you are representing, do the CVORs, as they are proposed, present a problem to individual companies?

Mr. Zimmerman: No, sir.

Mr. Pierce: None at all?

Mr. Zimmerman: Not that I am aware of. I think there is a problem with leasing companies, which has not been considered. The CVOR is not required by a lessee who is going to lease a truck for less than 30 days.

Mr. Pierce: Right.

Mr. Zimmerman: That leaves the CVOR in the hands of the post-service leasing company, a Rider or a Budget or whoever may be leasing commercial vehicles. If they lease a vehicle for 10 days, the provisions of the statute are such that they cannot hire the driver directly or indirectly, they cannot carry the cargo liability insurance and they have no control over the driver or over the lessee in the use of that vehicle.

There may be a real problem with leasing companies opposite, because the conviction for operating contrary to the Highway Traffic Act for overloads or for whatever will be registered against the leasing company, and the leasing company, by its very nature, has no control over the use of that vehicle or

the performance of the driver during the term of the lease. If it is over 30 days, then the lessee has to be a CVOR registrant, but under 30 days there is going to be a real problem opposite the companies that are leasing vehicles, such as Rider or Budget. Opposite a for-hire carrier, I do not think there is any problem with CVOR at all.

Mr. Pouliot: I have one brief question to the minister. No sooner had we started public hearings, Mr. Zimmerman, than we were submerged by a good many amendments. Unlike what the ministry does, it becomes more and more evident that this is drafted in haste. You should have hired Mr. Zimmerman. I know he is a very busy person, but you would have saved the committee and yourselves a lot of time and some embarrassment, because it is nothing short of that when we focus on the crux of the matter under section 9, the discrepancy between what the federal and the provincial legislation says. Surely it should have been addressed promptly.

Will you give consideration to framing into the provincial legislation what the feds have? The wording, once pointed out so ably by Mr. Zimmerman, is very significant but reads rather well. We are asking someone to determine whether a significant detrimental effect takes place and we are asking the same person to grant or not grant a licence. Once you go to a public hearing, you are gone, if you acquiesce to the hearing taking place, because the onus is on you to come forward and prove in a test that it will be significant, as opposed to "likely to be," which is a world of difference in the bottom line, which is the granting of a licence or not.

1710

I am somewhat appalled by Mr. Zimmerman's explanation. If it has been omitted, are we to be the recipients of more and more amendments on a daily basis? This thing will never see the light of day, unless our House leader tells us we will be proroguing in two weeks. I find it more and more difficult just to keep up with the many amendments. Maybe more food for thought or another few years will be necessary to focus on what needs to be done.

Mr. Zimmerman: I can say that we have made annual presentations to the CCMTA, and this matter has been discussed ad nauseam at that level. In our brief, we tried to restrict ourselves to certain key points rather than to be overly discursive, because we knew you were busy and wanted to report back. That is why it is only a five-page brief.

Mr. Pouliot: Please come back often.

Mr. Chairman: We will give the last word on this one to the minister.

Hon. Mr. Fulton: I am not in the least embarrassed. Under the heavy legislation that is entailed here in trying to transform something that is 50 years old, it is normal that there are going to be some changes from time to time as we proceed through the committee. We thought of hiring Mr. Zimmerman, but we could not possibly afford his substantial rates. I was down to speak when Mr. South was in the chair, but your colleague here put my name following yours as a courtesy.

Mr. Chairman: It is true, to give you the last word.

Hon. Mr. Fulton: It gives me the last word to tell Mr. Zimmerman and the members of the committee that we most certainly will look at the wording he has highlighted for us--the detrimental issue, if you like--with a view to amending our legislation.

Mr. Chairman: Thank you for your presentation.

The next presentation is from the Ontario Mining Association, Patrick Reid, Ken Johnston and somebody else. We do not have much time, so go ahead. Mr. Reid, welcome to the committee.

ONTARIO MINING ASSOCIATION

Mr. Reid: We are happy to see so many members from northern Ontario, who, we realize, will be very receptive to our comments.

I have with me on my immediate left Ken Johnston, who is the manager of transportation and traffic for Inco and, on his left, Mike Buller, manager, rail and truck transportation for Noranda. We are here to talk about something that is not in the act rather than something that is and we are here on the advice of people in the Ministry of Transportation and Communications who suggested this would be the forum we should attend to bring forward our particular situation.

Our brief today represents a continuation of the association's direct involvement in truck transportation deregulation since April 10, 1981, when we wrote to the then minister, the Honourable James Snow, seeking mining industry representation on the Public Commercial Vehicles Act review committee in order to present directly the views of our members with respect to amending the Ontario PCV act. The natural resource industries in northern Ontario were excluded as participating members on that committee. We were and still are concerned that there is a lack of information and perception concerning the impact of the resource industries on the gross provincial product.

We are gratified by the co-operation of the senior staff of MTC since April 1981. Their approach to overall policy and their actions signal to us that they are supportive of the conditions required for the wellbeing of the mining industry.

The association must identify and focus on the issues which face us and the actions required to correct them. We must continue to improve the business climate as it affects our industry and, in doing so, ensure that our efforts in attaining this important objective are consistent with the other needs in our environment.

At the Ontario Mining Association, we are very interested in the development and improvement of northern communities in Ontario. We have Red Lake, Ignace, Thunder Bay, Wawa, Manitowadge, Elliot Lake, Sudbury, North Bay, Temagami, Cobalt, Kirkland Lake, Timmins, Kapuskasing and Cochrane, many of which are almost completely dependent on mining and forestry and represent, to a large degree, the promise of northern Ontario beyond the 1980s.

The Ontario Mining Association represents 37 companies operating mines in Ontario. Our members, listed in the appendix, directly employ 30,000 people, produced \$4.7 billion worth of metals and minerals in 1985, and their operations are located primarily above the 45th parallel, that is, north of Bracebridge and Parry Sound. As some of you know, we do have mining operations in eastern and southern Ontario as well. The mining industry is one of the most important and consistent producers of employment and wealth in the province and should continue to be a prime factor in the economy of the north.

This is not the whole of the mineral industry in Ontario. There are about 350 companies active in mining throughout both northern and southern

Ontario, including 42 diamond drilling companies, 200 prospecting companies, 16 mining contractors, and many individuals who make significant contributions to the industry but who are not included yet in our membership. We do not represent companies solely in the sand and gravel business, or which operate quarries, peat bogs or oil wells. We make this distinction because our statistics and the basis for these statistics may be different from those used by others.

There are a number of smelters and refineries, vital and integral parts of the mineral industry. The total number of people employed is just under 80,000, according to an estimate from the Ontario Ministry of Northern Development and Mines.

Ontario is Canada's leading producer of 19 metals, including nickel, copper, zinc, iron, silver, gold and platinum. The production of metals makes up approximately 20 per cent of the province's total exports. The forest industries make a similar impressive contribution to Ontario's total exports, generating valuable income and foreign exchange.

Mining also has thousands of suppliers of goods and services who both contribute to the industry and are dependent on it. The association estimates that our members bought some \$2.4 billion worth of supplies from companies in Canada last year, much of which had to be delivered to the various mine sites by trucks.

In 1987, the 30,000 people directly employed in mining and mineral processing made up one per cent of Ontario's labour force, but this one per cent produced over four per cent of the gross provincial product. This is a tribute to the productivity of our work force and a recognition of the capital-intensive nature of the business.

We should also emphasize that although mining employees comprise only one per cent of Ontario's work force, the mining companies employ 15 per cent of northern Ontario's workers.

Canada is the world's third largest mineral producer and Ontario produces 44 per cent of the value of Canada's metallic minerals. On a per capita basis, Canada produces more metals per person than anywhere else in the world. Mineral production is very important to the economy of Ontario, and we have intense competition in the world markets. Since most of our product is exported, we are subject to the prices set by international trade on the world market.

The association also urges the committee to take into account not only the special status of the north as a distinct and different kind of constituency, but also the unique problems created by the nature of the land and its geographical remoteness from the principal centres of population and distribution in Ontario.

The transportation industry does, of necessity, relate to one or another of the province's natural resources: mining, forestry and energy. The trucking industry, too, has a dependency on the natural resource industry for prosperity. As an example, no new routes have been opened except for the purpose of serving one of the foregoing natural resources. Costs are substantially higher in the north than in the south due to many factors. Transportation costs for fuel, maintenance and operating supplies are affected by the additional distances, poor roads and the extremes of weather. Developments in the north are at best slow, difficult and expensive.

1720

Legislative history in Ontario, particularly with respect to mining, has successfully blended input as well as the requirements of both self-regulation and legal compulsion. The results achieved have been superior by any objective standard of measurement. The association stresses the importance of co-operatively arriving at legislation that accommodates the unique characteristics and the needs of the industry.

The association would state at this time its support for Bill 150 which is the subject of this committee's labours. Any legislation which ignores the constantly changing economic values will eventually result in the lack of credibility for and acceptance of the law. Within the foregoing context, there is merit in easing or eliminating regulations pertaining to the movement of goods, leaving the willingness and ability to do business to those fit, willing and able to move the goods.

These are only some of the hard realities of the mining industry in Canada, in Ontario today. They are good reasons, we believe, why Canadians should be in favour of a strong, healthy and vigorous mining industry; good reasons why governments at every level should act with fairness and with foresight when they frame legislation affecting our industry.

The essence of the foregoing was communicated to the PCV review committee on January 29, 1982, by this association. Since that time, much water has gone under the bridge, but we have seen little change in the regulation of the trucking industry. Since the federal paper Freedom to Move was issued in 1985, we have seen virtual deregulation in the air industry, a soon-to-be-amended National Transportation Act, a new Canada Shipping Act, and a new Shipping Conferences Exemption Act.

Bill C-19, the federal act relating to deregulation of interprovincial trucking, has moved forward with C-18, the National Transportation Act, but it now contains little of the promise it once held. Key to economic reform and opportunity was early acceptance of the entry criterion of "fit, willing and able." A criterion date that was originally promised for 1988 was moved to 1991, and now, we are informed, 1993 or later. In the meantime, a criterion called reverse onus will be used. Reverse onus is not perceived by the shipping public to be in keeping with the other progressive economic reforms slated for the transportation industry.

On October 23, 1985, we wrote to the Minister of Transportation and Communications (Mr. Fulton) in connection with a project under way in the ministry to identify a list of commodities that would meet relaxed regulations for those wishing to enter the trucking field. This list was called "ease of entry commodities" and would apply in all provincial jurisdictions across Canada.

Naturally, we preferred immediate implementation of "fit, willing and able." Nothing came of our request. On May 15, 1987, we once again wrote to the minister explaining that we sincerely believed that delaying of a "fit, willing and able" entry criterion until January 1, 1993, will have a detrimental effect on the producing, manufacturing and shipping communities. Again, we suggested that all mining commodities could be exempt from entry regulation as in the case of Manitoba, Nova Scotia, Prince Edward Island and New Brunswick or, at the very least, placed on an ease of entry list.

We were advised to appear before this committee and we are doing so. If

we cannot have a "fit, willing and able" entry criterion by January 1, 1993, our simple recommendation to this committee is to proceed effective January 1, 1988, with or without the concurrence of Quebec, to exempt all mining commodities or, at the very least, institute ease of entry based on ease of entry lists.

In closing, may we say that we in the mining industry require the informed support of the public. We require your support, your understanding and your confidence if we are to continue to make our substantial contribution to the high standard of living we in Ontario currently enjoy.

I have some copies of correspondence referred to that I can table with the committee and the Manitoba regulation which provides for the exemption, and so on.

Mr. Chairman: Some of the members have indicated an interest.

Mr. Pouliot: One brief question to Mr. Reid: If you are aware of it, would you favour me with the percentage of transportation costs in the mining industry that are directed, first, to trucking and second, to rail?

Mr. Reid: We have statistics--I am not sure I would lay my life down for them--that indicate rail is about 52 per cent of the total transportation value of commodities shipped, but those figures are a little hazy. Perhaps one of these gentlemen could refer to trucking costs.

Mr. Johnston: I will just speak to that to reinforce what Mr. Reid is saying.

The collection of that data is pretty far out, at best, but if the 52 figure is four or five years old, I would say it is probably 52 per cent in the other direction now in favour of trucking. More and more, the only resource for the mining companies, especially now that we are into the juniors, the smaller mines, is trucks. They are not building railways to the mines any more. I would say they might even be getting close to 60 per cent, apart from the large bulk haulers like ourselves, who do move about seven million tonnes of ore a year.

Mr. Pouliot: For instance, if someone had a small gold mine operation, he would truck the mineral and have it custom milled, right?

Mr. Johnston: Yes.

Mr. Pouliot: Would you say, Mr. Reid, that over the past year or two, since about 50 per cent is done through railroads, the costs have increased, stayed the same or decreased?

Mr. Reid: You would have to ask Mr. Johnston or Mr. Buller.

Mr. Buller: I would say that the costs have stayed the same over the last two years via both modes: rail and trucks. I think a lot of that has to do with the truckers becoming more and more competitive.

Mr. Pouliot: You must be aware that in Noranda mines, the Geco division, for instance--they keep changing names and it is difficult to follow--on a lot of minerals they struck a very important and a very significant deal with Canadian Pacific and Canadian National and, consequently, their costs have decreased by some 15 to 20 per cent, and they

are not a rarity. I do not know about Inco, but there has been some movement in that direction. It costs less money to ship, in real dollars.

Mr. Johnston: It costs less money to ship by--

Mr. Pouliot: By rail. Than it did some years back.

Mr. Johnston: Only because you have motor truck competition. That is why it is so important to have a very strong motor carrier industry in Ontario that is free to move.

Mr. Reid: Without being overly personal, there are people in this room who know about one mine that was shut down because it was dependent on rail and the cost of getting the ore to the mill was more than the ore was worth. That was sent by rail.

Mr. Pouliot: For the record, I would like to point out that Mr. Reid is very factual, very right. It was indeed one of the important factors, one of the reasons the mine shut down.

I would have liked to see more on safety, but given the brief--and I have worked in the mining industry for 20 years, so I am not all that surprised you have concentrated on the main issues here.

Mr. Johnston: Do you want a statement on safety?

Mr. Pouliot: We have the Workers' Compensation Board hearings coming up. We will wait.

Mr. Johnston: We did not rehearse this part of it, but we certainly make a very strong stand that safety must not be compromised under any circumstances. There is an addition to that. It should not be used as a red herring to delay your deliberations or the enactment of the necessary legislation to get on with bringing trucking and all forms of carriage into the 1990s very quickly. But safety under no circumstances can be compromised.

Also, being users of transportation, we feel we probably have about 85 per cent of what you will eventually have in a safety bill in place right now. It is a matter of getting the other 15 per cent or whatever it is into place and getting on with it. Just do not accept anybody dragging his feet.

1730

Mr. Chairman: The only thing that would slow us down on getting through the bill would be an inappropriate number of amendments placed before the committee that had to be debated. That is the only thing I can think of that would slow down deliberation of the bill, and I do not anticipate that.

Thank you very much for your presentation to the committee. We appreciate it. It is good to see you again, Patrick.

The next presentation is from the Pharmaceutical and Toilet Preparations Traffic Association.

Mr. Kopytowski, welcome to the committee. Do we have a copy--

Mr. Kopytowski: We have brought copies.

Mr. Chairman: Okay. Can we get those distributed to committee members?

While we are doing that, the schedule of hearings for the Occupational Health and Safety Amendment Act next week is in place for Wednesday and Thursday. As members know, we had agreed that we would do clause-by-clause of these bills this Thursday and, if necessary, next Monday; then have the hearings on Wednesday and Thursday on the health and safety bill.

Mr. Fulton wants to table something with the committee.

Hon. Mr. Fulton: You recall that last week the Ontario Trucking Association and others raised the issue of predatory and unsafe pricing practices. I would like to table copies of a report prepared by the federal Department of Consumer and Corporate Affairs and presented to the House of Commons standing committee on transport, reviewing federal trucking reform legislation. I believe this might provide useful background material for the members of the committee.

Ms. Hart: Since we seem to be dealing with procedural matters, can I have the clerk distribute to all committee members a recent decision of the Ontario Highway Transport Board--its reasons for a decision with regard to Robert Transport. I thought it would be of interest that despite its many illegal operations, it was given a kind of probationary licence, a temporary licence that would be reviewed, I think, a year hence. I thought it would be of interest given Claude Robert's comments to the committee.

Mr. Chairman: This was the Mr. Robert who was here last Thursday?

Ms. Hart: That is correct.

Mr. Chairman: We can proceed. Mr. Kopytowski, if you would introduce your colleagues, you can proceed with your presentation.

PHARMACEUTICAL AND TOILET PREPARATIONS TRAFFIC ASSOCIATION

Ms. Agostino: My name is Doreen Agostino and I am manager of transportation and customs for Eli Lilly Canada Inc. I am here today in my official capacity as president of the Pharmaceutical and Toilet Preparations Traffic Association. With me is Sam Kopytowski who is the distribution manager for Rorer Canada Inc. Mr. Kopytowski is here in his official capacity as our Ontario highway chairman of the PTPTA. Also with us is Eric Black who is the director of materials management for Hoffman-La Roche Ltd. Mr. Black is here in his official capacity as our second vice-president of the PTPTA.

Today, Mr. Kopytowski would like to present to you our brief outlining our support and our position with regard to deregulation of the trucking industry in Ontario.

Mr. Kopytowski: Thank you for giving us the opportunity to do this on behalf of our association.

The Pharmaceutical and Toilet Preparations Traffic Association is a 59-member organization of major Canadian manufacturers and distributors of prescription and over-the-counter pharmaceutical products, cosmetics and toiletry products. The association was originally formed in 1958 as the Drug and Toilet Goods Traffic Conference and was federally incorporated in May 1985 under the PTPA. The membership list is attached as an appendix.

The criterion for membership in our organization is that a company retain membership in one of the following associations: the Pharmaceutical Manufacturers Association of Canada; the Proprietary Association of Canada; the Canadian Cosmetic, Toiletory and Fragrance Association. Of the 59 companies, 63 per cent of them have offices and manufacturing facilities located in Ontario. Several others maintain distribution warehouses in the province. Ontario is the major Canadian market for most of our member companies.

The combined annual sales of the Canadian pharmaceutical and cosmetic industry are approximately \$4.5 billion. The Ontario market generates 40 per cent, or \$1.8 billion. Ethical pharmaceutical sales account for \$720 million. The Ontario government, through the Ontario drug benefit program and direct sales to hospitals, purchases about \$360-million worth from health care companies.

These association members sell directly to drug stores, drug wholesalers, hospitals, doctors, department stores and independent retailers. The nature of the products shipped requires a cost-efficient, effective transportation system that must be able to respond at any time to the needs of the customer. Orders may be distributed through several different modes. Shipment size could range from one carton to a full truckload or several truckloads. However, the major mode in Ontario is through its highways by truck transport. Member companies also produce products for major markets throughout the world.

Shipping requirements: The products shipped by the association are totally different in requirements from most of the everyday shipments that are dispatched by the average manufacturing or resource-based company. The following is a partial list of the complications involved in distributing products to the customers by any one of the members.

1. Many of the products have a short expiry date; therefore, they require an expedited service. This is usually done by courier or through an air transport mode.
2. Some of the products have narcotic or restricted ingredients; therefore, they must be shipped under a chain of signatures.
3. Some of the products have hazardous components; therefore, they must be shipped under the transportation of dangerous goods regulations.
4. Most of our shipments require heated trailers or trucks in the winter.
5. Some products must be kept under refrigeration while in transit.
6. Some products must be kept frozen while in transit.
7. The finished goods shipped out and the raw materials or finished goods received must be kept free of contamination from products that would render them unstable or cause them to lose their efficacy while they are in possession of the transportation company.
8. Inbound raw materials and outbound finished goods are highly susceptible to damage; therefore, they require extra care in handling.
9. Many of the products distributed are of high value. However, the cost of extra liability protection charged by the carriers now requires a shipper to be self-insured.

10. Emergency or rush customer orders may require immediate delivery on same-day services.

The nature of the products delivered to the customer requires a versatile, cost-efficient, highly service-oriented transportation system. To maintain health care in Ontario, a strong, open, competitive and dynamic industry is an important component.

There has been considerable debate on transportation deregulation over the past few years. The PTPTA stands before this committee to voice a loud vote for the total deregulation of transportation services in Ontario. The benefits to the association would be a transportation service industry that would fulfil these specialized needs at a lower cost to the member companies.

Many companies import raw materials and finished product from the United States. These companies have been able to save up to 50 per cent on trailerload shipments and anywhere from 20 per cent to 40 per cent on less-than-truckload shipments, depending on the size and frequency of the movement. This is largely because of a deregulated US transportation industry. The business environment the association is involved in is highly competitive. Competition is both domestic and international. A dynamic deregulated transportation industry will allow the member companies to maintain a strong market leadership.

Remaining concerns on Bill 150:

1. The public interest test reverse onus: The association believes the transition period of five years is too long. The trucking industry has had knowledge of the impending legislation and has been preparing itself for deregulation very well.

Many carriers are now in the process of being involved in takeovers and mergers. This business process is not being done to expand their existing licensing authority but for the purpose of purchasing market share. Our concern is that at the end of the five-year waiting period, there will be six major carriers in Ontario. Any new entrants will have great difficulty in capturing any substantial customer base because of the strength of the carriers already in place.

The association is committed to an open-market transportation system with many participants selling transportation services. Timing is very important. Deregulation cannot happen soon enough. Bill 150 must be brought into force January 1, 1988.

1740

To underscore this point we introduce an article from Traffic World, dated March 23, 1987, in appendix 2. This underscores the concern about monopoly trucking and the effect in a regulated environment. Six companies control 23 per cent of the general commodity trucking revenue in Texas. The effect on the economy of Texas has been stifling. The people of Ontario cannot afford for this to happen here.

2. Intercompany hauling: The PTPTA advocates a broader base than the 90 per cent common ownership criterion contained in the new act. The nature of the product line is such that private trucks which are operated by member companies should be allowed to haul other members' goods in situations where common ownership is not in existence. This would provide excellent savings

because of a similar customer base that would allow shippers to pool their deliveries. There would be a similar saving in receiving, as many members buy from the same suppliers and pickups could be scheduled to allow private trucks to operate efficiently.

3. Safety: The PTPTA strongly supports safety in the transportation of goods, and this should not be compromised under a deregulated environment. We feel that deregulation in Ontario should proceed because of the province's record in highway safety prior to a national safety code. The province's present Highway Traffic Act and Bill 152, An Act to amend the Highway Traffic Act, provide sufficient deterrents to violations of highway safety rules. The rising cost of insurance coverage and the liability payouts are further deterrents, to ensure carriers operate fleets in a safe manner.

4. Publishing tariffs: The association's position on tariff publishing and collective ratemaking is that we are against the process. It is our experience that this is not conducive to a free market negotiation that is encouraged in a deregulated environment.

Section 18 of Bill 150 is vague. Rates are to be published; however, this section does not indicate whether tariff rates are to be published with a government board or an independent tariff bureau. This section does not allow for confidential contracts between a carrier and a shipper.

5. Summation: The PTPTA has an immediate need for this legislation to be put into effect because of the specialized nature of the industry and the ever-changing business environment. The market the industry is competing in places great demands on our distribution system. The protection the regulated trucking industry enjoys is unnecessary and unfair. No other industry or group of companies enjoys such a privilege. The businesses the transportation service industry calls on as customers must struggle and compete in an open-market concept. It is only fair that the transportation industry should operate under the same rules and be deregulated now.

Attached are the two appendices we talked about. I feel that this article about what has happened in Texas is very important and I would like to read it out to underscore it. This is a company called Trammel Crow Company; the representative who was interviewed was a person by the name of Patty Shore, and she was talking about intrastate trucking in Texas.

"Our customers have told us that even though they need to be in Texas to serve its 17 million consumer base, it is not economically feasible to service Texas from Texas.

"The Railroad Commission of Texas has not allowed a major common carrier of general commodities to enter the Texas trucking industry since 1947. Six companies control 93 per cent of the general commodity trucking revenue in the state. The RCT has sanctioned a monopoly of an essential service. So, while trucking regulations may have served the state well for many years, the regulations have now become an expensive paper exercise which restricts competition, inflates costs and negatively impacts economic development.

"Since 1980, Texas has lost 5,000 jobs in the wholesale distribution sector. Texas has lost 100,000 jobs in manufacturing employment. Texas business failures have more than doubled. Texas business climate has dropped from second to 18th in national ranking. Texas intrastate truck volume has steadily decreased. Texas food processing firms have declined. It is cheaper to move Texas agriculture out of state via interstate carriers to be

processed, packaged and frozen and shipped back into the state via interstate carriers for consumption.

"Texas produces a higher-cost oil product because intrastate rates inflate the cost of moving supplies and equipment to and from the oil fields. Texas is a high-cost producer state. Receiving materials and shipping materials via regulated intrastate common carriers generate a noncompetitive price on finished products.

"Texas intrastate less-than-truckload rates are 10 to 15 per cent higher than discounted interstate rates. The intrastate shipping volume in Texas has steadily decreased since 1980. Shippers have found alternative methods to circumvent the Texas regulated trucking industry. Many have found it is cheaper to own and operate or lease and operate their own private truck fleet than to contract with intrastate carriers at regulated rates. Others have used a circuitous process going out of Texas and back into the state in order to qualify for interstate rates. Others have left the state and still others use hothaulers.

"The regulated carriers have created a political roadblock in Texas to protect their own self-serving interests while preventing competition, efficiency and productivity in the trucking industry."

This was on page 23 of the Traffic World of March 23.

That is our brief.

Mr. Chairman: Thank you, Mr. Kopytowski, I think we are off to get the California legislators and the Texas legislators together to meet in the same room.

I would like you to ask you one question before we go to the other members of the committee. On page 5, referring to section 18 of Bill 150, you say, "This section does not allow for confidential contracts between a carrier and a shipper." I am a layman in these matters. Can you tell me what that means?

Mr. Kopytowski: A confidential contract would be basically, the way I see it, from our company's point of view, a carrier comes in and looks at our needs. When he looks at our needs, he brings in a rate quote that has nothing to do with a tariff that is published. We strike a bargain. Our next door neighbour does not need to know what that bargain is, or any other company. It is between the two of us. It is like when you go into a store and are able to buy something and nobody else knows the price you purchased the goods at. That is what I look at as a confidential contract.

Mr. Chairman: Are you for or against that?

Mr. Kopytowski: We are pro being able to have confidential contracts. We want to be able to deal with carriers, based on our own needs as different individual companies, so that we can expect the best deal for our individual companies.

Mr. Pouliot: I have one brief comment. Welcome to the committee and thank you for your time. I realize, Mr. Chairman, that time is of the essence. It is not so much in the form of a question, but I do have some problem reconciling what has been said about "the poor state of Texas."

Recently, the committee has had the oil industry--which is paramount, as

we all know--play an important role also; as you mentioned, another field of endeavour. We have had some other briefs and this one paralleled, though of course it is a different school of thought, the experience of deregulation in the state of California, where they have pretty well lost 100,000 jobs.

California deregulated in 1980, and 350 mid-sized carriers have gone out of business in California since deregulation. It is pretty well the same thing as here. About 100,000 jobs were lost. That is pretty well the same as in Texas. About six major carriers amount to about 60 per cent or 70 per cent of the overall market.

So I could not help noticing, when I read and listened to your presentation, how parallel--I believe you of course but I also believe, and I have to say this, the California experience. I said, "My, my, how coincidental that you would have regulation." How, broadly summarized, would you reconcile the two factors? They are so opposite and yet--

Mr. Kopytowski: Maybe the problem is not deregulation; maybe the problem is other factors in the business environment. I would say that in the last seven years you have gone through high interest rates, you have gone through a recession and also bad management on a lot of these carriers because they were not prepared for this to happen.

Mr. Chairman: As long as nobody is hinting that this is one of those exquisite contradictions of capitalism, Mr. Pouliot, you can proceed without my displeasure.

Mr. Pouliot: I will keep it a secret.

Mr. Chairman: Are there any other questions? Thank you very much, Mr. Kopytowski, for your presentation to the committee.

That completes our task for this afternoon. On Wednesday afternoon, we have three groups appearing before the committee. Would it be acceptable to the committee, if we happen to finish early, which is a very unusual event, that we could start the clause-by-clause of the first bill? Is there any problem with that?

We will try, then, on Wednesday, if we finish early and if there is a half an hour or so, we can make a stab at that to jump on it because I think we are going to be sorely pressed for time to get through these amendments in time before the Legislature adjourns.

The committee adjourned at 5:51 p.m.

R-7

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

TRUCK TRANSPORTATION ACT
ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
HIGHWAY TRAFFIC AMENDMENT ACT

WEDNESDAY, JUNE 17, 1987



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, F. (Nickel Belt NDP)

VICE-CHAIRMAN: Reville, D. (Riverdale NDP)

Bernier, L. (Kenora PC)

Caplan, E. (Orriole L)

Gordon, J. K. (Sudbury PC)

McGuigan, J. F. (Kent-Elgin L)

Offer, S. (Mississauga North L)

Pierce, F. J. (Rainy River PC)

South, L. (Frontenac-Addington L)

Stevenson, K. R. (Durham-York PC)

Wildman, B. (Algoma NDP)

Substitutions:

Hart, C. E. (York East L) for Mr. McGuigan

Ramsay, D. (Timiskaming L) for Ms. Caplan

Sargent, E. C. (Grey-Bruce L) for Mr. South

Clerk: Decker, T.

Witnesses:

Individual Presentation:

Goodwin, T., Transportation Consultant

From the Canadian Industrial Transportation League:

Long, D., President

More, P. Highway Chairman, Ontario Division

From the Canadian Manufacturers' Association, Ontario Division:

Denholm, V., Vice-President

Richards, K. G., Chairman, Highways Subcommittee

Wiersma, D. S., Transportation Manager

From the Ministry of Transportation and Communications:

Fulton, Hon. E., Minister of Transportation and Communications (Scarborough East L)

Smith, T. G., Assistant Deputy Minister, Safety and Regulation, Registrar of Motor Vehicles

Burbidge, A. F., Director, Transportation Regulation Development Branch

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, June 17, 1987

The committee met at 3:38 p.m. in committee room 1.

COMMITTEE TRANSCRIPTS

Mr. Chairman: The standing committee on resources development will come to order. Just before we begin the afternoon presentations, I should tell the committee I have had a request from the Attorney General's department in Florida to send transcripts of the hearings we had on Bill 115, the lottery bill. They are involved in seeking an injunction against the Canadian distributors of those lottery tickets.

I have agreed, as committee chairman, to forward that material to the state of Florida. It gives me some satisfaction to do so, since the government is not proceeding with the bill that we anguished over for so long. At some other time, I hope somebody has to answer to that decision, but it is obviously not this committee. This committee did its work and got the bill back into the House. Since that point, it has languished.

Let us proceed.

Mr. Gordon: I do not want to be facetious.

Mr. Chairman: I think you are going to be.

Mr. Gordon: Every once in a while you do it to me, so maybe I will do it to you.

Do you think President Reagan would approve of that? He is all for free trade.

Mr. Chairman: I do not doubt it at all. The state of Florida is very unhappy. They have a law that there is only one lottery to be sold in the state and that is the state lottery. They are seeing these Ontario lottery tickets coming into the state. I told them I could speak for Ontario, and they should flood the Ontario market with Florida lottery tickets. We would not have a single argument against their doing so, and quite frankly, I hope they do it.

Mr. Gordon: Of course, not being facetious this time, but taking into consideration all the Canadians living in Florida--

Mr. Chairman: That is not who they are selling them to.

Mr. Gordon: They are not?

Mr. Chairman: No. They are selling them by mail and telephone.

Mr. Gordon: Just to Americans.

Mr. Chairman: Canadians would not pay \$2 for a \$1 ticket. Let us just leave it at that.

Mr. Gordon: They are patriotic.

Mr. Chairman: Having got that out of the way, let us proceed. I just wanted to make sure the committee understood there had been that request for information and I was intending to comply with it.

TRUCK TRANSPORTATION ACT
ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
HIGHWAY TRAFFIC AMENDMENT ACT
(continued)

Consideration of Bill 150, An Act to regulate Truck Transportation; Bill 151, An Act to amend the Ontario Highway Transport Board Act; and Bill 152, An Act to amend the Highway Traffic Act.

Mr. Chairman: Terry Goodwin is here to make a presentation to the committee. Mr. Goodwin's brief has been distributed already. I will hold it up. Do you recognize it, Mr. Goodwin? You looked a little quizzical there. Please be seated and proceed with your presentation. Welcome to the committee.

TERRY GOODWIN

Mr. Goodwin: Mr. Chairman, Minister and members of the committee, I have outlined my concerns--I hope fairly well--in the package of material you have. If you have had time to go over it, I propose to take most of the time today to answer your questions.

I should explain that I live on the Vaughan side of Thornhill. I have been in the trucking industry for over 30 years. I have also served on the old Vaughan school board and on the council of the town of Vaughan from 1974 to 1978. I think I have had my nose rubbed in what is called "public need" to a certain extent.

What I want to talk about here today is safety. That is not to say I denigrate the economic effects on safety. That is a particular thing, all of itself, which I might say has been woefully ignored. I think we should be talking about safety, of itself, today. Those are my particular concerns.

As I outlined, exhibit A is the draft I wrote for Truck Fleet, which explains the whole problem very generally and specifically as well. I did leave a copy of that with Tom Smith while it was at the printers for one of the Maclean Hunter magazines.

I had exhibit C returned to me, which is a letter over his signature. Of course, he explained to me that he did not sign it; it was sent while he was away for a week. It becomes very handy, because it shows that, certainly at the staff level, there is little or no intention to enforce safety on vehicles that originate out of the province, nor is there any intent to enforce an insurance requirement. The sum of \$200,000 a unit is peanuts. It is like going naked. Your staff have said they feel something higher would be more suitable, but they definitely point out they are not tying that to the commercial vehicle operator's registration or anything else; it is just too much paperwork.

I respectfully suggest that one line on the computer records they have now should be devoted to the certificate of insurance and that as soon as that lapses, that carrier is off the road right then and there. It will only be a very, very few, and as soon as they get the word, then it will be enforced of itself.

I am just horribly disappointed, because Mr. Smith told me he thought the insurance requirement would be one of the big enforcement factors. Then his staff is saying, "Oh, no, we can't do that; that's too much work." I sincerely question the knowledge or the sincerity or whatever other description you want to put to that particular part, and in the amendments that have come out, I see nothing, although I know that insurance is covered elsewhere through a different ministry.

Certainly, in this case, I would hope you would require that the insurance on commercial vehicles on the highway be a very substantial amount. I am talking about public liability and property damage. It does not have to go up to the \$5 million or \$10 million that it really ought to be, but it certainly ought to be \$1 million or \$2 million, not just \$200,000. As I say, that is like running naked. I am quite disappointed.

I also pointed out to Mr. Smith that in Bill 152, which is supposed to cover the CVOR--commercial vehicle operator's registration--it talks about a CVOR but it does not say what it actually is. Bill 150 refers to Bill 152, but nowhere in it does it actually define what it is. It uses only the initials. Mr. Smith again told me he was going to talk to the lawyer about that. I do not see any correction on that score.

The final thing is, when a vehicle is domiciled outside of the province, as I understand it now, it becomes very, very difficult to enforce against that vehicle. You have to wait until you catch him a second time and then have the note from the first time in your hand.

I am merely suggesting that this province do what almost every other jurisdiction in North America does, which is, when you have a vehicle from outside of that jurisdiction that wants to do business there--whether it be to run through or make a pickup and delivery or what have you--it must be registered with that state or province.

People quite regularly use guarantee companies to do that. The fee used to be \$25 years ago. It is probably closer to \$50 or \$100 right now. It is just a legal address that you have, and if something comes up and you are charged or you are convicted and you do not want to pay, it is taken out of the bond that company has to file with the jurisdiction. People will get the word very, very quickly that you cannot fool around with Ontario.

Even after clearing the scene with Mr. Smith, I then came across Harold Gilbert. I was talking to him about dangerous goods, because people seem to want to put a lot of railroad cars through Thornhill. There are quite a few there already. He suggested I see Harold Kivi. I did, and Mr. Kivi was a breath of fresh air. I talked to Mr. Gilbert afterwards and he suggested that Mr. Kivi would write me a letter which would suggest some of the things they felt they may need further guidance on.

1550

That is attachment F. Of course, it is not quite accurate when it says that I have no other concerns. I do, but this letter, if you read it carefully, is how a bureaucrat asks for help. He cannot be criticized for anything that he has written but he does say, in effect, "Please, let's get on with it."

Safety is very, very important and I do not think anyone is going to downplay it. But somewhere between the high thoughts and statements and the

practice of putting it into effect, there is a real gap of knowledge and maybe some out-and-out bias. I do not know. I have a lot of time for Mr. Kivi. I wish I had as much for some other members of the staff.

I hope that this committee will go back to the various caucuses and ask those caucuses to direct it to pass Bill 152 as fast as it can; not in this form, but with the requirements for insurance, the definition of a commercial vehicle operator's registration and the requirements that out-of-province vehicles be dealt with.

I should say that any other jurisdiction that wants to come up to Ontario standards should be given ministerial dispensation on the basis of reciprocity with Ontario carriers, very, very promptly. You do not have to tread on the toes of someone else. You can simply say: "We have the reciprocity here. Have you got the program in effect?" In fact, it will help spread the program.

I hope you would do that. I would also suggest that Bill 150 and possibly Bill 151, should be held up until such time as you get the safety aspect fully dealt with. I thank you all and will be glad to answer any questions you may have.

Mr. Chairman: Thank you, Mr. Goodwin. Just so you know the process, it was the intention of the committee to deal with public presentations such as yours and then go through the clauses, make amendments and by the end of next week, have it reported back to the Legislature for final approval; third reading. That is the intended process.

Mr. Pouliot: Mr. Goodwin, I too have very, very much enjoyed your contribution and wish to thank you for your time and your focus on safety. I do not think one can be too repetitious.

You have made reference to the knowledge and sincerity within the ministry. I can assure you that I know for a fact the staff is very knowledgeable and the minister is sincere.

What amount of insurance would you recommend as being adequate?

Mr. Goodwin: That is something a lot of us do not recognize. We think maybe, because we own a house and we have something else and some pension or something else coming due, that is the total amount of our net worth.

We forget that if you have an accident and hit an 11-year-old on a bicycle and he is crippled for life, the damages may come to many millions of dollars. In fact, that is the one in Brampton that has everyone scared right now. Therefore, I would suggest that each and every one of us look at what we carry on our own car. I will tell you that I recently took mine up for the beginning of this year to \$1 million, and then I took it up again to \$2 million. Fortunately, that was in effect when one of the cars was written off. I was not in it at the time. The person was hurt but not killed, and has recovered. I do not think \$2 million is onerous. I think it probably should be closer to \$5 million, because a large vehicle can do great damage.

As I pointed out in exhibit A, we know that 60 per cent of accidents involve trucks, but we do not know whether the car was at fault or whether it was the trucker at fault; we do not know whether it is a pizza delivery, a dump truck, a cartage truck or a long-haul truck. We do not know those things

and Mr. Smith has explained to me this is what they are trying to find out, rehash things of the last two years to try to get a handle on some of this.

I recognize that safety, like a lot of other things, probably comes back to driver responsibility. I am a former airplane pilot and every time we had an accident you would look to see what the cause was so that you did not do it next. I certainly hope there is more coming out that way.

Your question was for total amount. I would hope it could be \$5 million but I know it should be at least \$2 million.

Mr. Pouliot: One last question: In view of the probable passage of this legislation, I am talking about Bills 150, 151 and 152, do you see the roads being safer or less safe than they are at present?

Mr. Goodwin: I am glad you asked that question because I think you have probably been shown the clip from 60 Minutes. You have seen that. I should point out to you that the issue of Fortune, dated March 30, which was released just a little bit before, came out with the same sort of thing. I am not saying that good, economic regulation is going to stop accidents, but there is a definite connection there. When you go and put through these three bills as is, it is an open invitation for disaster in my books. There are no other words for it.

I explained right here what happened to me last August 28. It was an out-of-province vehicle that spread that steel load all across that intersection. It was just out of the lights. It was at night and cars did hit it at high speed. But when we went to look at it and the provincial police investigated, they found out the driver was registered to a post office box in Lanigan, Saskatchewan, and the vehicles were to another post office box in Lanigan, and it was still supposed to be an owner-operator type of thing, where he owned the steel that was involved.

We mentioned that last fall at the Ontario Trucking Association convention and both Mr. Smith and the federal people suggested: "No. That was not good." We may have to look to regulations under the act to spell out exactly what is an address. I would hope, specifically, that they would cite in the act that an address is not the 14th floor of the Toronto-Dominion Centre or a green monster or a townhouse where the vehicles cannot be kept and so on, or for that matter a service station where the man buys his fuel once a month. That has to be tied down very tight and it has been overlooked. I am very disappointed.

Mr. Chairman: Perhaps because his name has been mentioned in dispatches a couple of times, we should ask Mr. Smith if he would like to comment.

Mr. Smith: Maybe just to clarify with regard to the three issues I think are the principal things you have raised. On the question of insurance, as you indicated, it is a matter before another ministry and other legislation than that we are dealing with.

Our people are having discussions with the superintendent of insurance and his staff with regard to the levels. There have in fact been some reviews done across the country, nationally, to look at what the appropriate levels should be; figures such as \$2 million, that kind of thing, have been raised. I do not know what the final outcome will be, but this is under discussion and we feel the appropriate place for any specified levels is in other legislation.

The second issue may be a small one, as you and I discussed the fact that CVOR is not defined--at least the letters are not defined--in Bill 152. We will propose an amendment to define it. It is defined in the Truck Transportation Act, but it is not defined in this bill. We will propose a change to ensure that is defined.

The other issue had to do with CVOR, and I think the third and fourth paragraphs of Harold Kivi's letter of June 3 probably adequately and correctly describe the situation. What it basically says is that there will be CVOR certificates for all Ontario-based carriers, whether they are for-hire or private. We can do that using our vehicle file. For out-of-province carriers, the for-hire carriers will be added to CVOR and given a registration number as they apply for additional authority. So we capture them that way.

The group that is not easily captured are private carriers based outside the province. The proposal to capture them is based on the first time that they register a conviction. We will then start a file. Prior to that, there are no convictions in any case so there really is nothing to file. Over time, all of those who operate within Ontario and have at least one conviction, regardless of where the owner is from, will be captured.

Mr. Pierce: In your explanation about out-of-province operators and how you are going to bring them under the umbrella of the CVORs, what control would you have over a trucking company out of Alberta which acquires CVOR points? If it were in Ontario, you could have some restrictive measures placed on its licensing. What effect would you have on a trucker out of Alberta? It is not within your power to restrict his licence to operate.

Mr. Smith: If you have an Alberta carrier who operates in Ontario and accumulates a number of convictions--

Mr. Pierce: And if he is running as an owner-operator?

Mr. Smith: If it is the owner-operator who is the licensed carrier, then it is the owner-operator--

Mr. Pierce: Let me go this way, then. If you have trucking company A operating out of Alberta, running 20 per cent owner-operator trucks, and trucking company A acquired enough points in the CVOR system to warrant your attention, it would quit running the other 80 per cent of its trucks into Ontario and just use the owner-operator trucks to carry its freight loads in Ontario. That owner-operator has authority to operate in Ontario with an Ontario licence.

Mr. Smith: It would depend on the manner in which the relationship to the owner-operators is structured. If carriers continued to operate as they do now, with a number of owner-operators who are really under contract to a carrier, then in fact it is the carrier's CVOR that would accumulate the points. Within Bill 150, there is the concept of an owner-driver licence or a single-source licence. People with that kind of licence have a long-term contract with either a private or a for-hire carrier. Any problems, any convictions, while they are operating under that contract, are accumulated under the major carrier's CVOR record.

On the other hand, if the relationship between the carrier and the owner-operator is that the owner-operator is a for-hire carrier in his own right and in fact he is no longer under the control of a major carrier, then it will be that owner-operator's CVOR that would be affected. It depends on the relationship between the two.

Mr. Pierce: The owner-operator could have in fact no points against him, yet trucking company A in Alberta could have the maximum amount of points that could be assessed, and he is still hauling the load for trucking company A, through a dispatcher or by whatever other method. Being an owner-operator, he would not be subject to any restrictions on travelling in Ontario until such time as they have cleaned up their record back in truck company A. Then they can start using their own vehicles again.

Mr. Smith: Again, it would depend on the role that the trucking company takes and its relationship to these carriers, if it in fact is in control.

Mr. Pierce: I do not want to prolong this thing, but there are a number of owner-operator vehicles that just literally--it get backs to the question on address--travel around North America and really do not have a permanent address. They just travel from load to load, and they do it on a regular basis. They maintain licences in a number of states and a number of provinces. They are available for hire at any depot where they drop off a truckload. So they could pick up the load of trucking company A in Alberta, which no longer has any authority to travel in Ontario because it has extended all its CVOR points.

Mr. Smith: It is possible to do that. Again, they would have to be licensed to carry whatever the company--

Mr. Pierce: Granted, they would be. Trucking company A could still operate in Ontario, even though it has extended all its CVOR points, by using owner-operators who have not extended any of theirs.

Mr. Smith: By interlining with owner-operators.

Mr. Gregory: I think Mr. Smith mentioned--he was talking in terms of amounts of insurance--that it probably should more appropriately be dealt with in other legislation. I do not find that a problem, but may I ask, what legislation and how soon?

Mr. Smith: Possibly early 1988.

Ms. Burbidge: The Compulsory Automobile Insurance Act.

Mr. Gregory: It would be dealt with under that?

Ms. Burbidge: Yes, that is where the limits are today.

Interjection.

Mr. Chairman: If we are going to have an exchange, you are going to have to come up to a microphone. Hansard can only pick up half the conversation.

Mr. Gregory: What concerns me is that this is fine to put something off to another ministry, but it has a great effect on this particular bill, even though I could not agree more that it probably should not be in this bill. Is there any way, Minister, of guaranteeing that this is looked into and taken care of right away?

Mr. Smith: I guess the assurance we have from staff is that they would proceed with some changes. There does not seem to be a concern with getting on with it.

Mr. Stevenson: Staff is answering a political question here.

Mr. Gregory: With great respect, it is all right to say, "Yes, we will look after it under some other legislation in some other ministry," but in the meantime this bill is going to go on and great concern has been expressed here. I do not see any immediate move. The Minister of Consumer and Commercial Relations (Mr. Kwinter) is not in here saying, "Yes, I will take care of that right away." Has it been discussed with the other ministries?

Hon. Mr. Fulton: Only at the staff level, but I would certainly undertake at the political level, Mr. Stevenson, to pursue it with my colleagues.

Mr. Gregory: With a strong recommendation from you that changes be made to that act?

Hon. Mr. Fulton: Post-haste.

Mr. Gregory: We will remember that.

Mr. Chairman: We know what post-haste means.

Mr. Gregory: Right, post-haste. Like, if not sooner.

Mr. Chairman: Mr. Goodwin, did you want to respond to any of these things that have been said? We will give you the last word.

Mr. Goodwin: All right. Mr. Smith's answers just reinforce my concern. I am certainly glad that the question of insurance has been tied down, because I believe that after it is settled elsewhere, it should be tied to that CVOR, so that it shows up on their little screens, blinking when it is not in effect. People pay for their insurance by the quarter in the trucking business. It is a great deal of money that they have to put out. But the plates are often good for a year, or the reciprocity is good. The chances are there for abuse in a big way.

It is not the major carriers that we are concerned about, but the fellow like the guy from Lanigan, Saskatchewan. Nobody really knows how many of these people there are who are allegedly carrying their own goods. That is one of the things we are up in the air on. I think the insurance area is one you can go after very quickly.

1610

The other one that Mr. Smith explained will catch the people from that other province is that, cops and robbers, we will catch them the second time they are here. Frankly, I cannot accept that.

It is so simple. It is so normally recognized in other jurisdictions that when you are from outside of that state, I will say in this case, you have to file there or you are in trouble. The guarantee companies are set up just to do that and can do it quickly. If they file a bond with you for \$5,000 or \$10,000, there will not be any of these vague things Mr. Smith refers to about who is what or which are what.

If you put people at the border, at the first scale, be it Keewatin or be it half a dozen people at Windsor, you will know whether these people are qualified or not here in the province, and it is not just somebody operating for hire, because people use the subterfuge of owning the goods, buy-sell, far too often.

Mr. Chairman: I think Mr. Pierce had one more question.

Mr. Pierce: I have one short question, and that is the one about addresses of what we have heard referred to as gypsy truckers or whatever.

Mr. Goodwin: Right.

Mr. Pierce: The trucker I am referring to, who literally lives out of his truck and does not, for all appearances, have a permanent address--what do you do with that type of individual? How do you register them so you know where they are, because they are literally all over North America?

Mr. Goodwin: That is exactly what I am talking about. If he wants to operate in Ontario--let us say he is from Arkansas--he has to have on file here, presumably through a guarantee company, that he has a legal agent right here in the province and there is a bond for \$5,000 or \$10,000 here. He does not have to put up that much cash. No. You pay a small fee to the bonding company, a guarantee company, for that.

If he started losing \$50 this time and \$75 that time because he did not come to court and he was assessed thus and so, he will learn very quickly, because he has to make that up to the bonding company or it will cancel his bond in other states, whether it is 40 or 48 of them.

It is very quick, it is very simple and it is something that is well used in other jurisdictions. I do not think you have to have any qualms about embarrassing other jurisdictions, because if they do have reciprocity with Ontario, I think the staff will be coming to the minister very, very quickly for an exception in that case.

Mr. Chairman: Thank you, Mr. Goodwin, for your presentation to the committee.

This afternoon there is going to be a vote in the chamber at 5:45, I believe. Members should keep that slight time restriction in mind as we are going through the afternoon.

Interjection.

Mr. Chairman: I have no idea who would force a vote on a nice Wednesday afternoon, but somebody is.

Mr. Gregory: While we are having a bit of a break here, I have cleared the things on the matter we discussed and we are quite prepared to go ahead with clause-by-clause tomorrow.

Mr. Chairman: Thank you, Mr. Gregory. We will deal with the clause-by-clause and amendments starting tomorrow afternoon.

Next is the Canadian Industrial Transportation League. Members have had the brief distributed. It looks like this. Mr. Long?

Mr. Long: Mr. More will be giving the presentation.

Mr. Chairman: Okay. If you would introduce your colleagues, Mr. More, and proceed.

CANADIAN INDUSTRIAL TRANSPORTATION LEAGUE

Mr. More: It is my honour to address the committee today on behalf of the Canadian Industrial Transportation League. My name is Phil More. I am employed by Canada Colors and Chemicals Ltd. as manager of supply and transportation services. We are based in Toronto.

I think it is appropriate to introduce the members of the Canadian Industrial Transportation League who are with me today. On my left is Charles Norton, general traffic manager with Kraft in Montreal and national chairman of CITL. On my extreme right is Ingrid Nordmeyer, manager of purchasing, transportation and customs of Chemagro in Toronto and chairman of the Ontario division of CITL. This is David Long, who is the president of CITL.

It is appropriate today that a member of the industrial community, as a traffic manager, gives the address. It perhaps gives a more basic approach to a real-life industry situation such as Canada Colors and Chemicals may exhibit.

The Canadian Industrial Transportation League wishes to thank the committee for the opportunity to bring to its attention the views of CITL's membership on the subject of Ontario's proposed trucking legislation, Bill 150, Bill 151 and Bill 152.

CITL is a national association representing senior transportation managers responsible for the purchase of transport services. Over 900 individuals representing some 450 companies located in all regions of the country are members. These companies ship bulk resources, processed goods and manufactured products domestically and internationally. Members purchase transportation services in all four modes and exert a strong presence in intermodalism.

A significant percentage of our membership is domiciled in Ontario. The importance of a competitive and efficient trucking industry to our Ontario members is indisputable. A fact which may surprise many of you is that shippers are directly responsible for more than 60 per cent of the trucks on the highways of this province. Of course, these are private corporate haulers, many of which are members of the league.

So when you have been hearing the views of various trucking associations, remember that the for-hire industry represents only 40 per cent of the goods-carrying vehicles on the highway. On the other hand, we shippers represent 60 per cent of the trucks and 100 per cent of the goods within all the trucks, be they private or for-hire. Without these goods, there would be no reason for freight transport services at all.

You have the opportunity of showing leadership for a mode of transport that is losing ground within the global trend to deregulate transport undertakings. In Canada, the air, rail and marine modes are buoyed by new legislation that engenders more competition and better consumer choice.

The trucking environment has been a protected one which has allowed such medieval practices as guaranteed returns on investment and collective pricing. It has thrived within an arcane world of freight tariffs, rate hearings and, let us not forget, surcharges, which American transportation managers were liberated from when their rail and highway transport were deregulated in 1980. That is to say, the United States government ended the economic regulation of transportation--definitely not the safety regulation or the engineering regulation, etc.--regulation stipulating who could sell a good or service on the open market and at what price.

Bill 150 goes a long way towards fostering a more competitive highway transport environment in Ontario, and an outline of some of the very progressive elements within the bill will be given. However, in the all-important area of entry criteria, which is clearly the key to true economic deregulation, the bill has stalled true pro-competitive actions for perhaps another five years beyond 1988.

From a national perspective, we are confronted with a world of ironies when it comes to the highway mode. The most modern mode is the least forward looking. Historically, a curious alliance has developed between the provincial regulators and those regulated to resist change at all costs.

On March 26, 1987, the provincial people got together and convinced the federal government to stall open entry for extraprovincial licences for five years after January 1988. No doubt the recent Ontario amendment to extend the reverse-onus period to five years weighed heavily on some of the other provinces. But in reality, the legislation before you is a bill that was tabled in 1982 by the previous government after lengthy committee work extending for many years in which the for-hire industry actively participated. The recent entry test modification from three to five years is one of the few substantive changes. Now, in 1987, one would have expected a telescoping of the time frame, if anything, as five years have already passed since the original tabling of the bill.

1620

However, producers, buyers and exporters cannot really afford this excess of conservatism. The league and the Coalition of Concerned Shippers, a group of 14 producer associations of which we are a member, are going to visit provincial legislatures and talk to Premiers and ministers responsible for economic development. They will be asked whether they know what their highway boards are doing and what it means for jobs in mining, processing, manufacturing and agriculture in their provinces. Surely this is the root of Canada in the first place. The league trusts that when they understand the employment impacts of this additional five-year blanket of protection, provincial legislators may decide that what is a total of eight years has been enough time for the for-hire interests to adjust to a competitive environment.

Let us look at some positive elements of this bill. Despite some major and fundamental concern, the league is pleased with some key elements in the proposed Truck Transportation Act, Bill 150. Of particular interest to us is section 2b, which mandates that the Ontario trucking system be "...of benefit to the users of transportation services and not for the protection from competition of individual providers of such services." This has been the league's theme for many years.

I might add, in an address this afternoon, the minister mentioned that transportation must be fast, efficient and affordable. I wholeheartedly agree with that theme.

You, the Ontario legislators, are to be commended for having moved much faster to produce enlightened transportation legislation than some of your counterparts in other provinces. The proposed Truck Transportation Act, Bill 150, and related Bill 151 and Bill 152, are largely in keeping with the necessary deregulatory philosophy of our times.

The concepts of the commercial vehicle operator's registration of Bill 152 will provide, with secondary legislation, a significantly enhanced level

of safety. The league is pleased that the government has never failed to link, in a common profile, Bill 150 and Bill 152, which have moved together through the parliamentary stages to committee. Careful attention has been given to safety, and one hopes that the CVOR concept will be utilized by other provinces. Safety considerations remain paramount within our association as they are undoubtedly within all responsible sectors of the transportation industry.

Members of the Ontario division of the Canadian Industrial Transportation League have noted aspects of the legislation that we would like to bring to your attention in the interest of strengthening the existing bills. Four prominent concerns come to mind for which recommendations are put forth as possible solutions.

Implications of the reverse-onus public-interest test: As noted in our opening remarks, the league is less than enthusiastic with section 7 of Bill 150, which proposes an elective test of entry to Ontario trucking; a public-interest test that will be sunsetted after five years. The league is on record as finding unnecessary a conceptually similar three-year transitional test proposed for the federal Motor Vehicle Transport Act, Bill C-19. Therefore, a similar five-year test for Ontario would be excessive in the extreme. With regret, one notes that federal regulators have extended their transitional test period to five years, a move to conform with the unnecessary period pioneered by Ontario.

The proposed five-year public-interest test proposed by the Truck Transportation Act would have been inconsistent with the abovementioned three-year public-interest test proposed by the federal government for extraprovincial endeavours. The lack of uniformity in the substance of the public-interest tests of both acts would have led to confusion.

The league believes that the public interest test of the federal legislation, although flawed, was stronger and more concise. One might venture to believe that federal regulators feared the creation of a two-tiered system of entry to trucking in Canada. Two standards of entry would have existed for an extraprovincial entrant once both pieces of legislation had been passed, the Truck Transportation Act test for intra-Ontario arms of extraprovincial endeavours and the Motor Vehicle Transport Act test for the rest of the operation.

The paradox in all this is that private trucking will continue to flourish with the five-year hiatus, whereas with an unencumbered fitness test, effective immediately, we would no doubt see a growth in the for-hire business at the expense of private hauling. While continuing to live with the charade of public-interest tests on entry, which are nearly always passed or with rates which are nearly always discounted, the CITL and all Canadian shippers refuse to accept the pretence that these tests do anything other than protect vested interests.

The league recommends the exclusion of the public-interest test from the proposed Truck Transportation Act. A fitness test embellished with stringent insurance requirements and a uniform safety code are sufficient requirements for entry into trucking. The deregulatory philosophy that has long predated the Truck Transportation Act makes January 1, 1988, a feasible commencement date for a fitness-only test of entry. Deregulation has been pending long enough. Truckers are familiar with it to the point that no transitional public-interest test is necessary. A move to extend the public-interest test period is a step in the wrong direction.

Rate control: The methods of contracting outlined in section 18 of the Truck Transportation Act are improved, but different wording and greater detail would perhaps better clarify their implications. Nowhere does the term "private contract" or "confidential contract" occur. What is provided for is the ability of a licensee to charge other than what is contained in a tariff if it is provided for in a contract. However, no exemption is provided for from the impact of subsection 18(1), which requires the licensee to publish its tariffs. Even allowing for the input of regulations, the confidentiality aspect is destroyed if "publish" is given its common meaning.

The term "approved by the board" with respect to the legitimacy of a clause 18(3)(c) contract implies incorrectly that the board will hold a hearing for contract approval. Perhaps a more appropriate term would be "registered with the board," which implies more correctly that a contract will be on record and, at least to that extent, published.

The league requests that the term "confidential contract" be defined and developed for the purposes of the Truck Transportation Act, as it is in section 120 of the proposed federal transportation legislation, Bill C-18. This section defines what matters may be considered confidential and allows for the publication of that part which is not confidential. The league recommends that a similar process be developed for the Truck Transportation Act, thus removing any ambiguity as to what is intended. In addition, it is recommended that wording with respect to the association between contracts and the board be clarified.

Commercial vehicle operator's registration: The league supports the implementation of the proposed commercial vehicle operator's registration system. This legislation is operator-specific, not vehicle-specific, in nature and is designed to increase the accountability of Ontario commercial vehicle operators. The league fundamentally supports the notion that all vehicles should be treated similarly. Stringent safety regulations must be applied to all commercial vehicles, whether they are in private or for-hire hands.

In its desire to increase accountability, the CVOR legislation encompasses some very broad objectives. These include: identifying the operator in control, the beneficial user; assignment of complete responsibility for the operation of the vehicle, linking the privilege of operating a vehicle to responsibility for how the vehicle is operated; effective control of problem operators; and a range of progressive sanctions for problem operators.

1630

While supporting the implementation of the commercial vehicle operator's registration legislation, the league recognizes the fact that this move will present problems to some shippers. The difficulty here will be for the shipper to accept responsibility for the actions of a third-party operator, for example, owner-operator, in every instance; instances in which the degree of accountability was extended perhaps too far. This is a matter which is of great concern to shippers and one certain to spur further discussion. This accountability extends to various off-highway requirements, such as maintenance records and driver records for which the CVOR certificate holder and not the individual licensed operator will be responsible.

Intercompany trucking: An area of section 11, which deals with intercompany hauling, serves to keep transportation costs high. Subsection 11(5) stipulates that "a corporation is controlled by an individual

corporation or group of corporations," and therefore entitled to undertake intercorporate hauling, "if (a) voting securities of the corporation carrying more than 90 per cent of the votes for the election of director are held, otherwise than by way of security only, by or for the benefit of the other person or group of persons."

This rigid requirement forces many shippers to turn to for-hire carriers in many cases where company-affiliated carriers could be better utilized. The users of transportation services and their customers will be better served if a 51 per cent control figure is adopted. The cost savings realized by industry through this change, which would in many cases permit the use of company-affiliated trucks, will be passed to the consumer through lower operating costs.

In conclusion, the measures outlined in Bills 150, 151 and 152 represent a quantum leap forward by provincial legislators on the road to a more competitive highway transport environment in Ontario. Acting as a bellwether province with regard to this legislation, Ontario's actions are certain to be studied by other provinces. In keeping with this progressive philosophy, the CVOR system of Bill 152 demonstrates Ontario's vital concern for safety. The league applauds this action. However, it is felt that competition and consumer choice would be better served by the immediate adoption of a "fit, willing and able" entry test at the earliest opportunity.

On behalf of the members of our Ontario division, the league would like to thank the standing committee on resources development for the opportunity to make known our views. The league trusts that recommendations made here will be given strong consideration as a means of further strengthening existing legislation.

The Acting Chairman (Mr. Pouliot): It is a very interesting and thorough presentation. Do the distinguished members of your panel have any comments before we go to questions from members of the committee? Okay.

Mr. Gregory: On page 3 of your brochure, it states precisely, "That is to say the US government ended the economic regulation of transportation, not the safety regulation, not the engineering regulation; regulation stipulating who could sell a good or service on the open market and at what price." I read that to say you are satisfied that the US government, whereas it ended regulation--it deregulated--kept a hands-on approach from a safety standpoint.

We have had some presentations from various groups that give the lie to that statement, that the safety regulations in the US were not immediate enough. In other words, there were no proper safety regulations in the US to coincide with the deregulation of issuance of licences. Do you have any information on that?

Mr. More: First, I would like to comment, on the Canadian side, that the CVOR concept is quite involving from an accountability point of view, such that the Ministry of Transportation and Communications has terrific control on the highway of any infraction and on a continuing basis to maintain safety and equipment. From the US side, of course we have heard the same situations and scenarios from the US that perhaps deregulation there was not as good as what some people state. All I can state is that there are opposing views and I have one in front of me here that I would like to mention.

"According to a report prepared by Economics and Management Consulting

(EMC)"--we are talking US here--"the data from the first six years since the Motor Carrier Act of 1980 do not show a link between safety and deregulation. According to Russell C. Cherry, president of EMC, the records of the Federal Highway Administration...actually show a decrease in the accident rate for big trucks since 1980."

I do not intend to get into an argument about whether it is or is not, but there are definitely opposing views. Suffice it to say, in Ontario, we believe that the CVOR concept will be all that is necessary. I believe also with the aspects of the transportation of dangerous goods regulations in Canada and many other factors happening today, the industry and truckers are so well gearing up for safety and equipment maintenance that I think we have what is available for us. I might add, as well, that we have on the roads truckers who are not licensed. We, too, want to get them off the road. I think this concept will make them get licences and be accountable. There is justification for what is being done for safety.

Mr. Gregory: But you are not buying what is implied in that suggestion.

Mr. More: I honestly cannot say. I do not know.

Mr. Gregory: That deregulation has lessened the number of truck accidents. You are not ready to say that.

Mr. More: I cannot comment. I do not know.

Mr. Gregory: On page 5 you are using a quotation which says that Ontario trucking system be "of benefit to the users of transportation services and not for the protection from competition of individual providers of such services." Should we also include in there the rights of the citizens of the province?

Mr. More: Yes.

Mr. Gregory: That should be all-important, should it not; which, of course, highlights the safety aspects of it.

Mr. More: We were basically saying it is not designed only for carriers, shall we say, but it is a derived demand.

Mr. Gregory: On page 7, you state, "The league recommends the exclusion of a public-interest test from the proposed Truck Transportation Act." That is a rather radical departure from your other statements where it says you are reasonably satisfied with what we are doing.

Mr. More: We feel the timing has been such that the industry, on both sides, is quite prepared or should be prepared to proceed without the public-interest test. I guess I am thinking of a reverse onus in particular.

Mr. Gregory: You are thinking of it as it is now as compared to what it will be?

Mr. More: Yes. Reverse onus, of course; but I am talking about the next five years, from 1988 to 1993 or whatever the five-year period will be, we do not feel that is necessary because of what has happened in the past. We do believe that industry is prepared without this five-year interim.

Mr. Wildman: I have one short question. Would the gentleman agree that most of these figures, which have been presented to us and are presented in these types of forums, tend to be self-serving and largely to be determined by the bias of the presenter?

Mr. More: That is always a possibility. Our figures were taken from Statistics Canada. They are about two years old. One can always say that is a possibility.

Mr. Wildman: The figures which were presented to us by the Ontario Trucking Association from the California experience indicated a significant graph increase in accidents in that state since deregulation. Do you dispute those figures?

Mr. More: I would have to ask whether that is indicative of the entire US. You can take a piece of the US and ask whether that is indicative of the US deregulation. I am not sure.

Mr. Long: If I could respond to this, whenever you look at statistics that are provided, you have to look at the source.

Mr. Wildman: Exactly. That is what I said.

Mr. Long: Not necessarily the source from the presenter point of view, but the one who actually did the analytical work behind the numbers.

Mr. Wildman: Sure.

Mr. Long: If you look objectively at this, and we are trying to be objective, I think any credible source of data in the United States--and I would alert you to the General Accounting Office of the United States--I think this study by Economics and Management Consulting, the one that was quoted, was done by government as well in reaction to an allegation the Teamsters union had made. They did this study objectively and professionally, and they have come up with the conclusion that the accident rate is falling.

1640

There is no cause and effect suggested here at all that deregulation is going to create safer conditions on the highway. We are not saying that. But all the statistics that are done by the reliable and credible sources in the US--I will stand on this--will show you there has been a decrease in accidents occurring over a six-year or seven-year period since deregulation came in.

Mr. Wildman: Could you speculate that is related to the increase in concentration in the industry, with the larger firms operating and the smaller firms going out of business?

Mr. Long: I do not think anybody has made that connection.

Mr. Wildman: That has happened, has it not?

Mr. Long: Basically, the issue is whether accidents have decreased.

Mr. Wildman: I am raising another issue. I am raising the issue of concentration in the industry.

Mr. Long: I honestly have not seen any connection being made between that and the decrease in accidents.

Mr. Wildman: If the small operator who cannot afford to operate at lower rates goes out of business and in the process, of course, is not able to maintain his truck as he should prior to going out of business, he might in fact experience a higher accident rate. Once he goes out of business, the overall accident rate may drop.

Mr. Long: That could well be.

Perhaps I could alert the committee to something that was said earlier about the famous 60 Minutes program. Since that time, Mike Wallace of 60 Minutes has indicated, in fact, that it was sort of an erroneous conclusion that could be made out of a single roadside stop in Tennessee. I think most people have looked upon that as a piece of sensational journalism.

I do not think the connection you are trying to make here has been proven. It is an interesting one. It could well be from concentration, but I have never seen any study that has been done on that.

Mr. Wildman: Do you dispute the concentration in the United States?

Mr. Long: There has been concentration. Perhaps on another issue, it has not reached the stage of the dangerous four-firm concentration ratio. There have been concentrations in four or five regions of the US, but not to the point where the business has exceeded 50 per cent of the market. Concentration is not at a dangerous level, according to the concentration ratio the US applies to manufacturing firms.

Mr. Wildman: Would you argue with the Ontario Trucking Association assertion that this legislation, which it was not opposing, would in fact benefit the big operators as opposed to small operators?

Mr. Long: There is a possibility, certainly, that there will be further mergers and acquisitions. Mr. White, who was before this committee a few days ago, showed clearly that we have been through a litany of mergers over the last 10 years. There could well be more. Certainly, competition laws in this land will make sure that if those mergers get to the point of a 60 per cent, 70 per cent or 80 per cent control of the market, they will be dealt with accordingly.

Mr. Wildman: You have a great deal more confidence in the competition legislation we have at the federal level in this country than I do.

The Acting Chairman: Any more questions or comments? Members of the panel, the committee wishes to recognize Miss Nordmeyer, Mr. Long, Mr. More, who acted as chairman, and Mr. Norton. We certainly thank you for your presentation.

Before we entertain the presentation from the Canadian Manufacturers' Association, I am seeking the acquiescence of the members of the committee that we take a few minutes for a break.

The committee recessed at 4:45 p.m.

4:53 p.m.

Mr. Chairman: The resources committee will come to order. The bells indicate a vote in the chamber, but we believe the vote will not be held for half an hour or three quarters of an hour. Unless we hear differently, we

should proceed with this presentation from the Canadian Manufacturers' Association. We will keep in touch with the whips to make sure there is no hitch on the timing of the vote, because it is on the auto insurance bill and I do not think anybody in this room would want you to miss that vote.

The Canadian Manufacturers' Association, Ontario division, Mr. Denholm, welcome to the committee. We look forward to your presentation. I assume you will introduce your colleagues who are with you. A copy of the brief has been distributed. It looks like this, if you are trying to spot it among your papers. Welcome to the committee.

CANADIAN MANUFACTURERS' ASSOCIATION

Mr. Denholm: I would like to start off by introducing the members of our group who are representatives of the Canadian Manufacturers' Association transportation committee. To my right is Ken Richards, the chairman of the CMA highways subcommittee and customs and traffic manager for Rothmans, Benson and Hedges Inc.; Don Hanna, who is a member of the transportation committee, is manager of traffic services for Union Carbide Canada Ltd.; Don Wiersma is the CMA transportation manager.

We would like to thank you very much for this opportunity to come before you this afternoon and explain our views on Bill 150. Although our presentation focuses largely on Bill 150, we are also prepared to speak to Bills 151 and 152.

Before we start, I would like to give you a little background on the CMA, which will tie into our presentation. The CMA was formed in 1871, four years after Confederation, and today is a national bilingual organization of more than 3,000 member companies, two thirds of which form the Ontario division and are resident in Ontario. They vary greatly in size, however; 70 per cent of our companies have fewer than 100 employees, and they represent all facets of manufacturing.

The association plays two vital roles on behalf of the manufacturing community in Ontario. It monitors domestic and international government policies to create a suitable climate for manufacturing and provides member companies with information needed to operate effectively in today's highly competitive and rapidly changing world.

The CMA is a nonpartisan organization that strives to make a positive contribution to the legislative process at both federal and provincial levels. All the positions we take are developed by national, regional and local committees, made up of member company executives. The CMA Ontario division has been associated with the development of the commercial trucking deregulation legislation from its inception. I personally go back nine years on this. I am, I hope, seeing the fruition of a lot of work that has been done on it.

We recount our participation in a two-year study, resulting in the Public Commercial Vehicles Act of 1967, the Uffen report on safety and the responsible trucking report of 1983. An outgrowth of these reports was the formation of a number of subcommittees, such as those dealing with CVOR and market entry standards. The CMA participated very actively in this policy development. We consider Bill 150 to be a consensus, a starting point in transportation deregulation. We also consider Bill 150 and the others to be legislation which will help manufacturers to be competitive, to help offset the tremendous cumulative cost of the government's new social programs.

With that, I would like to call upon Ken Richards to elaborate on our position.

Mr. Richards: I will convey the CMA position.

In order for manufacturing to flourish in Ontario and continue to drive the economy, manufactured goods must be able to move to domestic and export markets by way of an efficient transportation network. Trucking is the dominant mode of transportation in Ontario, as well as for CMA members. Approximately 65 per cent of manufactured goods for domestic and export markets move by truck. The need for economic reform of the trucking industry is essential to Ontario. Many manufacturing companies have rationalized their operations and implemented measures to reduce manufacturing costs. We believe transportation offers an opportunity for further cost reduction by introducing efficiencies in transportation services, as has been demonstrated in the US under similar deregulation.

1700

We conclude from the US experience that the deregulated environment has resulted in more innovativeness from both carriers and shippers in areas such as logistics planning, load factors and control systems. The economic benefits achieved in the US can be similarly realized in Ontario after deregulation.

Our comments on the legislation: The CMA commends the Ontario government for introducing this long-awaited legislation. Upon implementation, it will provide economic benefits for the province, particularly in regions where transportation forms a substantial portion of the total manufacturing cost.

We have no doubt that greater flexibility of carrier operations will develop competition and improve both utilization and efficiency of their equipment. We believe improvements in the transportation infrastructure will provide benefits in terms of service and cost to Ontario manufacturers. Ontario has one of the best highway systems in the world, and the deregulated environment will allow modern, efficient carriers to utilize these assets to the advantage of manufacturers and consumers.

We have some concerns with respect to Bill 150, the first of which is the public-interest test reverse onus, which is identified as section 10 in the bill.

We believe the five-year reverse-onus transition period is much too long. Our view is that the trucking industry has already had a number of years during which to prepare for implementation of the proposed legislation. The three-year transition period, as proposed in the federal legislation for extraprovincial trucking, is already unnecessarily long.

We recommend that both intraprovincial and extraprovincial deregulation move to a "fit, willing and able" entry requirement as soon as possible. We are aware that since our brief was prepared an amendment is under way with regards to the federal legislation.

If I may digress just slightly from our position paper, I would like to say we feel our views are relatively consistent with the views of the Ontario Trucking Association. They went on record with the standing committee in Ottawa regarding Bill C-19 to the effect that they were prepared to move directly to a "fit, willing and able" entry test, provided certain recommendations were followed. Many of those recommendations related to

safety, and we feel the national safety code will address those areas completely by the early part of 1988.

Another concern is intercorporate hauling, identified as section 11 in the bill. The Ontario division of the CMA advocates intercorporate hauling based on 51 per cent common ownership as opposed to the 90 per cent common ownership criterion as contained in the new act, which in fact is a continuation of existing legislation.

For many years the association has advocated that manufacturers who operate their own vehicles be permitted to move the goods of related companies in addition to their own. As operating costs have risen, private carriage operators have been co-ordinating their deliveries to customers with pickup of supplies and raw materials. The round-trip use of equipment and labour is highly efficient, plus significant fuel saving can be realized. Productivity improvements of this type have enabled manufacturers to offset cost escalations.

Further productivity gains can be made by allowing the practice of intercorporate private carriage. Companies located in the same area often duplicate each other's delivery routes. Rationalization of such routes between related companies can result in a dramatic reduction of total vehicle miles travelled and associated costs.

Our final concern is with single-source leasing. We welcome the provision for single-source leasing. However, we feel the 30-day minimum is excessive, and we would recommend a reduced minimum-lease period of five days.

We have some comments on safety. There has been a strong focus on the safety aspects of deregulation. The Canadian Manufacturers' Association believes safety must not be compromised to achieve economic efficiencies. We fully support the need for a national safety code. Its implementation should be given high priority.

However, we disagree with statements proclaiming that deregulation will unavoidably result in unsafe practices and higher accident ratings. To the contrary, the US experience is very favourable, and we quote from congressional testimony given by the United States Department of Transportation. The source of those quotations is contained in our brief.

We would also like to comment on the proposed national safety code. We were given an overview of the proposed code and legislation recently at a steering committee implementation meeting. We were impressed, we are supportive and we are prepared to co-operate in any way whatsoever towards the implementation of the proposed national safety code.

In summary, this legislation is needed urgently in order to keep pace with rapidly changing competitive conditions. Production efficiencies, increased capital costs, just-in-time inventory practices and minimum inventory levels in both the manufacturing and distribution systems all place new and increased demands upon the transportation industry.

Currently, Ontario benefits from a broad industrial base and must compete in domestic and world markets in order to retain its position as a world-class manufacturing community. Deregulation of the transportation industry is imperative if we are to continue to meet such goals.

The Ontario division of the CMA supports the Truck Transportation Act,

1986, and endorses it as beneficial and necessary legislation for the province. We urge the government to move quickly on this legislation, so the resulting economic gains will flow into the Ontario economy without undue delay.

We would also comment that we have reviewed Bill 151 and Bill 152. We are in full support and would ask that this legislation be enacted as well.

Mr. Chairman: Thank you. Mr. Bernier had a question.

Mr. Bernier: Just to get a little clarification, on page 4 you make the comment that Ontario has one of the best highway systems in the world. Not only do I find that a little contrary to what we are hearing in the Legislature, but also the municipalities have banded together and visited Ottawa recently to ask Mr. Crosbie to join with the province to rehabilitate highways and build new highways and bring them up to standard. We are something like 10 or 15 years behind. Now I have the CMA telling me we have the best highway system in the world. I hope that is a misquote or a misprint.

1710

Mr. Richards: I guess there are no situations that cannot be improved upon. In our experience, our members are not complaining about the ability to move goods backwards and forwards over the highway system. We are unaware of the carrier community complaining that their costs are impacted or their service is impacted by the condition of the infrastructure here.

Mr. Bernier: Do you know what the minister of highways is going to do? He is going to quote this.

Interjections.

Mr. Bernier: I suspect that in the public meeting he is at, he is going to be heard. This is what the CMA--

Interjections.

Hon. Mr. Fulton: If we could get on with these other matters.

Mr. Sargent: He is going to say that you had 42 years--

Mr. Bernier: We built them. You guys can fix them up.

Interjection.

Mr. Richards: We are commenting here on the system, not on the maintenance.

Mr. Chairman: Are there any other questions by members?

Mr. Gregory: I am sorry, I have forgotten your name.

Mr. Richards: Ken Richards.

Mr. Gregory: You mention that you endorse the Ontario Trucking Association position.

Mr. Richards: I think what I said was that we concur with the OTA

position. If I may, I would like to quote what we understand to be the OTA position. I am quoting from the OTA brief that was submitted to the standing committee on transportation on the new transportation legislation contained in federal Bill C-18 and Bill C-19. I believe I am quoting in context, but I can make a copy of this available to you.

"OTA feels that the reverse-onus provisions contained in Bill C-19 are nonsense. Consequently, if the conditions OTA has set for its support of the legislation--acceptance and implementation of its recommendations--are satisfied, then the industry could go directly to a fit, willing and able entry test."

The recommendations are identified here. There are nine of them, three of which--and I believe the most important three, because they are the first ones stated--relate to safety. Our interpretation of these recommendations and the proposed national safety code lead us to believe that the recommendations will be satisfied by the implementation of that safety code which, we understand, is scheduled for January 1988.

The remaining recommendations relate to pricing, unsafe or predatory pricing, and what they describe as recommendations for a level playing field, which, to them, are very real concerns. We are not convinced that the concern is adequate to postpone the implementation of a fit, willing and able entry test.

Mr. Gregory: One of the recommendations from the OTA--and it is not directly concerning this bill, but will flow from it, I would expect--is the recommendation that we move immediately to change the regulations regarding maximum 65-foot trailers and that we go to a double trailer. I guess that means 120 feet, 130 feet, or something like that. How do you feel about that?

Mr. Richards: Positive. We are represented on a committee, the Transpro committee, and have had input. Our position is that this type of efficiency is highly desirable. We support the carriers and their recommendations. Our position is that safety must not be compromised in any form.

Mr. Gregory: Are we not coming at it from both sides then? I think it would be difficult to argue the point that 130 feet of trailer behind a tractor does present somewhat of a dangerous situation to a motorist.

Mr. Richards: I am really not in a position to argue the technology, but I have been exposed to the information the committee has prepared and, I believe, submitted to the industry. Our understanding of what they are requesting is the opportunity to test that equipment. What they are suggesting, of course, is that we are surrounded by tandem trailers. Quebec operates them. I believe Winnipeg operates them. I understand that the state of New York has permitted them for quite some time.

Mr. Chairman: Mr. Gregory, I wonder if I could interrupt here. We have just been notified that a vote is about to take place and members must be in attendance for the vote. What is the wish of the committee? By the time everybody gets gathered and the roll call is taken, the votes tend to take up more time than one would think they would. Is it the wish of the committee to adjourn now? I think by the time we get back, it would not be feasible to resume. Is there anything else that is urgent?

Mr. Sargent: If there are no more questions, why do we not adjourn?

Mr. Chairman: That is what I am asking the committee.

Mr. Pouliot: I have one very quick question. There seems to be some sort of a contradiction. I am a little confused and maybe you can help me with this. On page 6 of your brief, you are quoting with regard to safety, "The DOT can find no correlation between economic deregulation and the statistics on accident and death rates since 1980." Who is the creator of this quote? Would you have his name?

Mr. Richards: The US Department of Transport.

Mr. Pouliot: The US department? I do have one from one of your predecessors who paid this committee the compliment of a visit last week. I have a quote from the commissioner of the California Highway Traffic Patrol saying the following: "Clearly truck safety in California is deteriorating at a very rapid pace; and California, since 1980, has experienced deregulation." Would you care to comment and maybe reconcile the two statements?

Mr. Richards: Perhaps Mr. Wiersma would comment on that.

Mr. Wiersma: Yes, I would like to comment on that. When we were looking for data on the safety issue, we felt that we should look for something that gives a relatively long history of safety. We recognize that there are conflicting data in the field. However, for this type of presentation, I think we need to look at the long, broad experience. This is a five-year study and it covers the US in totality. It does not concentrate on local situations. It is true that the California data that have been published are perhaps somewhat in contradiction here. Overall, taking these data and our general experience with shippers in the US, they are to the contrary.

Mr. Chairman: For the long haul, so to speak.

Mr. Wildman: But you would agree that California, in population and in economy, is about the same size as Canada, as opposed to the very shorter distances--

Mr. Richards: If I may respond to the gentleman's question--

Mr. Chairman: Very quickly.

Mr. Richards: Basically, we think safety is an issue whether or not deregulation is enacted. We think that the national safety code proposed will address the safety issues. The way to maintain safety is through enforcement. We think that is required whether or not we go to deregulation.

Mr. Wildman: That is a fair response.

Mr. Chairman: Thank you, Mr. Richards. Thank you very much for your appearance. I do apologize for the aborted discussions we now have, but it really is out of our hands. Thank you very much for appearing before the committee.

We are adjourned until tomorrow afternoon following question period.

The committee adjourned at 5:18 p.m.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

TRUCK TRANSPORTATION ACT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT

HIGHWAY TRAFFIC AMENDMENT ACT

MONDAY, JUNE 22, 1987



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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VICE-CHAIRMAN: Reville, D. (Riverdale NDP)
Bernier, L. (Kenora PC)
Caplan, E. (Oriole L)
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Offer, S. (Mississauga North L)
Pierce, F. J. (Rainy River PC)
South, L. (Frontenac-Addington L)
Stevenson, K. R. (Durham-York PC)
Wildman, B. (Algoma NDP)

Substitutions:

Gregory, M. E. C. (Mississauga East PC) for Mr. Bernier
Hart, C. E. (York East L) for Mr. McGuigan
Lane, J. G. (Algoma-Manitoulin PC) for Mr. Gordon
Ramsay, D. (Timiskaming L) for Ms. Caplan

Clerk: Decker, T.

Staff:

Williams, F. N., Legislative Counsel
Yurkow, R., Legislative Counsel

Witnesses:

From the Ministry of Transportation and Communications:

Fulton, Hon. E., Minister of Transportation and Communications (Scarborough
East L)
McCombe, C. J., Director, Office of Legal Services
Hobbs, D. G., Deputy Minister

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, June 22, 1987

The committee met at 3:34 p.m. in committee room 1.

TRUCK TRANSPORTATION ACT
ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
HIGHWAY TRAFFIC AMENDMENT ACT
(continued)

Consideration of Bill 150, An Act to regulate Truck Transportation; Bill 151, An Act to amend the Ontario Highway Transport Board Act; and Bill 152, An Act to amend the Highway Traffic Act.

Mr. Chairman: The standing committee on resources development will come to order. It was agreed that today we would deal with Bills 150, 151 and 152 clause by clause and get as far as we could. If we complete them, so much the better. They would then be reported back to the assembly tomorrow for third reading. If we do not complete them today, then we would report them back to the House for completion in committee of the whole House as the House desires to schedule them, because on Wednesday and Thursday we deal with the health and safety bill and groups are already scheduled to appear before the committee.

Before we start today with the amendments, there are a couple of things. First, the minister wanted to say a few words. Second, I hope Mr. Gregory would explain what he wants to do with the amendments.

Hon. Mr. Fulton: In the past two weeks the committee has been presented with many excellent briefs. I have given consideration to the many issues that have been discussed and I feel it would be appropriate to make a number of further amendments to those we have previously tabled.

The first three of these amendments address concerns raised about the fairness of the fitness test. The registrar of motor vehicles will replace the minister as the official responsible for most administrative functions in the Truck Transportation Act. This will make the legislation more consistent with the process of administration now in place under the Highway Traffic Act. The effect of this will be to provide for more legal recourse to appeal administrative decisions under the Statutory Powers Procedure Act. It will also more accurately reflect reality, as the registrar is the official who will in fact be acting in these matters.

Concerns were also raised that a few components of the fitness test required judgement. In fact, these parts of the test were expected to be used rarely, if ever. This amendment will clarify the intent that the fitness test be purely administrative in nature. As such, it will be based strictly on objective and measurable criteria.

There will be further protection added for the applicant. Where an applicant is determined not to be fit under the fitness test, there will be the provision for an appeal to the board. The board may, upon hearing the appeal, amend or confirm the decision of the registrar.

These three amendments are compatible with the overall mandate of the registrar for safety. The safe operations of vehicles is governed by the Highway Traffic Act. The registrar has, in fact, actively conducted reviews of carrier operations since 1979. I wish to assure you that the process is in accord with the principles of natural justice and fairness.

In addition, I support the suggestion to change the language respecting the public-interest test to reflect more uniformity with the federal legislation.

I also agree that it is reasonable to change the level of common ownership required for intercorporate trucking from the present requirement of more than 90 per cent to more than 50 per cent.

Finally, I agree that the TTA be clarified to ensure that freight forwarding and similar services be included under this act.

I would also like to address a number of other concerns which have been raised during the course of these hearings. First, I wish to assure the committee that these issues are not new. During the regulatory reform process, they have been examined extensively, and our position has been formulated after very careful consideration. In-depth analyses have been carried out involving all affected groups. Many studies have been commissioned and results in other jurisdictions have been taken into account.

For example, on the matter of United States transborder trucking, I would like to advise that this has been the subject of a number of major studies. As a result of our analysis, we are more than satisfied with the health of the Ontario trucking industry in this market and are very confident that it can compete successfully against carriers from other provinces and the United States.

The subject of service to small communities and to northern Ontario has been especially important. We have no reason to believe that these areas will experience any deterioration in service after reform. In fact, there is some evidence to suggest service will improve. This has been concluded from a study examining the existing situation in Ontario that was conducted by the Ministry of Transportation and Communications. In addition, numerous studies in the United States have examined the impact of deregulation on small communities and support our conclusions.

The period in which the public-interest test will be in effect has also been questioned. The five-year period is considered by some to be excessive. This is not the case, however, when you realize that the public-interest test will likely be utilized on only a limited basis. After hearing a case, the board will be able to stage in a proposed service, not totally prohibit it.

It is, however, considered an essential safety net which will be activated where serious disruption of the marketplace is likely to occur. The five-year period is also necessary to allow for a review of regulatory reform, prior to the expiry of the public-interest test.

Finally, I would like to touch on the matter of predatory or unsafe pricing. Predatory pricing comes under the jurisdiction of the federal government and is subject to the Competition Act. This act address predatory pricing through both criminal and administrative processes. It provides for a competition tribunal empowered to make remedial orders based on a civil rather than criminal level of proof. These powers are similar to those proposed by

the Ontario Trucking Association for the board. Giving the board such powers therefore would be an unnecessary duplication of responsibility.

I assure you, Mr. Chairman, that exhaustive study and consultation have taken place over several years on the many aspects of reforming trucking regulation. This process has resulted in the legislation presently before you.

1540

Mr. Pierce: Can we have a copy of the minister's statement?

Mr. Chairman: That would be a good idea.

We will deal, I presume, with Bill 150 first. There are a large number of amendments to 150, some by the ministry and some by Mr. Gregory. Before we begin, perhaps you could make some arguments for what you propose to do, Mr. Gregory.

Mr. Gregory: Yes. In the package that was circulated from us are basically three amendments, one of them rather a large amendment. I would like to give notice at the moment that on the advice of legal counsel we are withdrawing the amendment dealing with section 6 and with reciprocity. The amendment to do with predatory pricing, section 18, again with the advice of legal counsel as to it being out of our jurisdiction, we are withdrawing.

Mr. South: Excuse me, I am lost. Where are you?

Mr. Gregory: I think you received copies of amendments that I was proposing.

Mr. South: This?

Mr. Gregory: Yes. I think you will find that the first one deals with section 1.

Mr. South: Okay.

Mr. Gregory: The next two deal with section 6 and section 18.

Mr. South: Right, thank you.

Mr. Gregory: The third amendment, actually the first amendment that I am proposing, states, "I move that sections 1 to 44 of the bill be struck out and the following substituted therefor."

The purpose of this procedure is that we requested legislative counsel to prepare a set of amendments dealing with each of these amendments. There are numerous amendments through the bill, and basically what we are basing this amendment on is a report submitted by the law firm of Strathy, Archibald and Seagram which basically rewrites the bill. The intent of it is to substitute the term "minister" or "ministry" for the board, referring to the Ontario Highway Transport Board.

In the accompanying text that you have, any amendments to the bill are underlined. We can of course have amendments prepared, given time, but I know and sympathize with the minister's desire to get this bill through, and certainly we are of the same feeling, but we feel very strongly that the responsibility for the issuance and the terminating of licences should fall entirely within the auspices of the Ontario Highway Transport Board.

Mr. Chairman: You are not into the clause-by-clause yet, though, right? You are just introducing your intent here.

Mr. Gregory: I am just introducing my reason for putting it in this way, because I realize it is out of order. I hope it will be accepted as an amendment, a global amendment, if you like. If you wish to go through each one, perhaps the minister or his staff might have sections where this would not be applicable.

The minister is a very active fellow and very timely, and I notice his first amendment deals specifically with this. Perhaps those sections he has outlined on the bottom where it says "exceptions" might be the very ones we accept in this case. I do not know.

All I am asking is that the committee accept this form of amendment.

Mr. Chairman: Thank you, Mr. Gregory. I appreciate the intent of what Mr. Gregory is trying to do here. I think it is most proper in its intention. However, I really feel I must rule this kind of global amendment out of order. However, having said that, I do think it is helpful the way you have done it and the way in which, all the way through, given this global motion at the beginning, you can still go through the bill item by item, and I propose that we do that as a committee.

There is a long-standing tradition in the Legislature--and there are people like Beauchesne who, members will know, are the experts on this--that sections of bills are not deleted; they are simply voted against. I think we should maintain that long tradition in the interest of consistency.

I would rule that way, but at the same time, I think the way Mr. Gregory has done it was well intentioned and helpful, if it were not out of order. I hope we can start at the beginning of the bill and proceed on our way through.

Because of the length of these amendments, it is possible that we can abbreviate that process considerably on each section, with Mr. Gregory's assistance, by just referring to the underlined part that would change.

Mr. Gregory: You will not need it in writing from me then.

Mr. Chairman: No. I would say we do not need it in writing, because we have it here. That would expedite the process considerably. If that is acceptable to the committee, we will proceed. Let us begin with Bill 150.

TRUCK TRANSPORTATION ACT

On section 1:

Mr. Chairman: I have an amendment to subsection 1(1), which is as close as you can get to the beginning of the bill. Who is moving this?

Mr. Ramsay moves that subsection 1(1) of the bill be amended by adding thereto the following definition:

"'Registrar' means the registrar of motor vehicles appointed under the Highway Traffic Act."

Mr. Ramsay further moves that "minister" be struck out and "registrar" be inserted in lieu thereof in all sections of the bill except subsection 1(7) and sections 9, 14, 24, 35 and 37.

Mr. Chairman: Mr. Gregory, on a point of order, I assume.

Mr. Gregory: I think so. Mr. Chairman, I heard, just as Mr. Ramsay did, your explanation of why we had to go through this one by one, notwithstanding the fact that you felt my presentation was rather clear. I am now seeing a motion that does precisely what I wanted to do, with certain exceptions.

Mr. Ramsay: But we are the good guys.

Mr. Gregory: It is a nice play, but I respectfully suggest that you either declare it out of order or else let us vote on it right now.

Mr. Chairman: I opt for your first alternative, in order to be consistent once again. I think the whole process of clause-by-clause is just that, clause by clause. The thing will become impossible to monitor and to control if we start doing this all the way through the bill with one sweeping motion.

Let us start on subsection 1(1) of the bill. Do you have an amendment that deals only with subsection 1(1)?

Mr. Ramsay: The first part of that motion.

Mr. Chairman: All right, we will end it at the word "act" and we will leave out "further moves." Is that acceptable?

Mr. Ramsay: Yes.

Mr. Gregory: You are going as far as the words "Highway Traffic Act," so it reads, "'Registrar' means the registrar of motor vehicles appointed under the Highway Traffic Act." If I get my way, I do not think it is going to appear in the bill anyway. I guess I cannot argue against that being what it means, because that is what it does mean. Whether it has any place in this bill after it is amended, I do not know.

Mr. Chairman: We would have difficulty anticipating that at this point.

Mr. Gregory: It would be difficult to vote against that section.

Mr. Chairman: You have all heard the amendment. Any further comments on it? Do not let me go too fast here. Stop me if I am moving too quickly. All those in favour of Mr. Ramsay's amendment, please indicate. Opposed?

Motion agreed to.

Mr. Chairman: Mr. Gregory, you could help here if you could keep close track of your amendments.

Mr. Gregory: I will do my best.

Mr. Chairman: I do not want to skip over them.

1550

Mr. Gregory: By the same token, whereas it might not end up appearing, I move my first amendment.

Mr. Chairman: Mr. Gregory moves that subsection 1(1) be amended by adding the definition:

"'business plan' means a plan submitted to the board by an applicant for, or holder of, an operating licence."

You are adding this to section 1?

Mr. Gregory: Yes, we are adding it in much the same way as the last speaker added.

It is suggested that perhaps in applying for a licence, a business plan vis-à-vis a financial plan or statement of financial ability, be submitted with an application. I am told by ministry staff that this would be part of a fitness test at any rate. If that can be elaborated on and explained, maybe it removes the need for it, but I have not seen anything to the effect that it does remove it.

Hon. Mr. Fulton: Are you suggesting it would be included? It is not included. It was very definitely eliminated some time ago. It was not included nor is it intended to be included.

Mr. Gregory: Who eliminated it?

Hon. Mr. Fulton: We did, in formulating the bill.

Mr. Gregory: Before it came before us?

Hon. Mr. Fulton: Yes.

Mr. Gregory: I guess this amendment is a suggestion that it be put back in.

Mr. Chairman: Is that clear to members? We are adding something. Mr. Gregory is moving an addition to section 1, namely the definition of a business plan, which is not presently in the bill. Your motion would end at the end of that underlined section, Mr. Gregory. Am I correct?

Mr. Gregory: That is correct.

Mr. Chairman: Are there any questions or comments? All those in favour of Mr. Gregory's motion, please indicate. All those opposed? We have a tied vote, and there is a long-standing tradition--

Hon. Mr. Fulton: Do I not get to vote?

Mr. Chairman: No, you do not vote.

There is a long-standing tradition that the chairman of the committee votes in the case of a tie and votes to maintain the status quo when he can do so with conscience, so I will vote against the motion.

Motion negatived.

Mr. Gregory: Explanation, Mr. Chairman: Does the status quo not provide for any business plan, the status quo being the existing act?

Mr. Chairman: Right. That is my understanding; this is the act and it does not include a business plan.

Mr. Gregory: This is the proposed act. Is the status quo the existing act until this changes it?

Mr. Chairman: That is a good question.

Mr. Pierce: The status quo is the existing act. It is the only act that is legislation.

Mr. Chairman: It is the only act that is in place.

Mr. Gregory: This bill is an amendment to the act.

Mr. Pierce: This is a proposed act and it is not legislation. The status quo would be the act that is, in fact, legislation.

Mr. Chairman: Good point.

Ms. Hart: The current Public Commercial Vehicles Act does not contain "business plan," so the status quo would be to keep it out.

Mr. Chairman: That is correct. So I am comfortable in my vote.

Mr. Pouliot: The chairman has done a good job.

Section 1, as amended, agreed to.

Section 2 agreed to.

On section 3:

Mr. Chairman: Mr. Ramsay moves that subsection 3(1) of the bill be amended by inserting after "vehicle" in the first line "on or after the first day of January 1988."

Motion agreed to.

Mr. Chairman: Mr. Ramsay moves that clause 3(4)(j) of the bill be amended by striking out "January, 1989" in the second line and inserting in lieu thereof "July, 1989."

That is on page 5 of the bill. It changes the date from January 1989 to July 1989.

Motion agreed to.

Mr. Chairman: Mr. Ramsay moves that section 3 of the bill be amended by adding thereto the following subsection:

"(7a) Where an intermediary such as a freight forwarder arranges the transportation of goods of others for compensation, on a highway, destined beyond an urban municipality, except where the intermediary is acting on behalf of a consignor or consignee for a prearranged fixed fee for the services, the intermediary is operating a commercial vehicle to carry goods of others for compensation within the meaning of subsection 1."

Mr. Pierce: Could we have an explanation of that by the presenter?

Mr. Chairman: Explanation requested.

Hon. Mr. Fulton: This amendment appears to be a provision to respond to the submissions made to the committee by the Ontario Trucking Association and a number of other interest groups. It clarifies that freight forwarders and other types of intermediaries between the shipper and the carrier will be required to be licensed as carriers in some circumstances.

Mr. Gregory: Can this be deferred?

Mr. Chairman: Do you wish to stand this section down?

Mr. Gregory: Yes.

Mr. Chairman: I assume there is no problem with that?

Ms. Hart: It was in Dean Saul's submission, one of those we heard last week.

Mr. Chairman: The addition of subsection 7a to section 3 is stood down. We will come back to that. We will not finalize all of section 3 until we have dealt with that amendment.

On section 4:

Mr. Chairman: Mr. Gregory has an amendment to subsection 4(1). This is your standardized amendment.

Mr. Gregory: Yes, as you say, this is a standardized amendment, simply to substitute "board," meaning the Ontario Highway Transport Board, for "minister."

Mr. Chairman: This is the amendment Mr. Gregory is putting throughout the entire bill, substituting "board" where it says "minister" or "ministry."

Mr. Gregory: I would like to ask that this be stood down.

Mr. Chairman: Stood down?

Ms. Hart: On a point of order, Mr. Chairman: Is this not one of the sections where the government wants to change "minister" to "registrar" in 4(1), and did that not come up before Mr. Gregory's amendment?

Mr. Chairman: Where do I have that note?

Ms. Hart: I merely bring it to your attention because I think that is your concept.

Mr. Chairman: I have subsection 7 in that regard.

Ms. Hart: But the second part of the first amendment that was read out by Mr. Ramsay was a global amendment to change "minister" to "registrar" in all sections but for certain sections.

Mr. Chairman: Except those sections, yes.

Ms. Hart: This is one of the sections where it appears.

Mr. Chairman: I ruled that kind of amendment out of order, so in

order to be consistent, we would need somebody to move an amendment. We could do it orally. I do not think we would require it to be in writing.

Mr. Gregory: I did move that this section be stood down.

Mr. Chairman: Yes. In the interests of all members, when there is a request to stand down a section, we should stand it down. That will be in your own interest in most members' cases. It is in their interest to co-operate on standing a section down.

When you were saying to stand it down, Mr. Gregory, were you suggesting that section 4 be stood down?

Mr. Gregory: Subsection 4(1).

Mr. Chairman: Okay.

Mr. Gregory: On the other hand, maybe I am going to reconsider.

1600

Mr. Pouliot: I think we would search long and hard for flaws associated with your proposal. We were truly unable to find any, and we are quite willing to acquiesce to your amendment.

Mr. Ramsay: In section 4, the word "minister" needs to be amended about 10 times. We could just say where the word "minister" appears in section 4.

Mr. Chairman: In that section, yes. I think that would be appropriate. But we have stood down section 4 for the moment. Is that agreed?

Mr. Gregory: I would like to move to reopen it.

Mr. Chairman: When? Now?

Mr. Gregory: Yes, if you want.

Mr. Chairman: You do not want it stood down now?

Mr. Gregory: No.

Mr. Chairman: All right. It has been requested that this section not be stood down but that we deal with it.

Mr. Gregory: I am ready to abide by Mr. Ramsay's suggestion that we do some four or five instances all at once in this section where "minister" is being replaced by "board," if we are in agreement.

Mr. Chairman: Okay. Mr. Ramsay moves that in all the occurrences in section 4, "minister" be struck out and "registrar" be inserted.

Mr. Gregory: Wait a minute. I thought we were dealing with my motion.

Mr. Chairman: We are just talking about section 4 of the bill now.

Mr. Gregory: I realize that. The motion was to substitute "board" for "minister." Mr. Chairman, you asked me to present my amendment and I said

it is a standard amendment, as I have outlined, which replaces the word "minister" with "board." Right?

Mr. Chairman: That is correct.

Mr. Gregory: Mr. Ramsay suggested that we could deal with four or five or 10 or 12 instances at once, and now he comes through with a new motion that says we are substituting "registrar" for "minister." That is contrary to my motion.

Mr. Chairman: I would treat them as two separate amendments.

Mr. Gregory: Are you going to deal with one before the other?

Mr. Chairman: Yes.

Mr. Gregory: Are you accepting mine then?

Mr. Chairman: I already did.

Mr. Gregory: Fine. My motion was that the word "board" be substituted for the word "minister" in subsections 4(1), 4(2), 4(4), 4(5) in two places, 4(7) and 4(12).

Mr. Chairman: I am sorry, I should not have recognized Mr. Ramsay. That is my fault. Is what Mr. Gregory has moved understood?

Motion agreed to.

Mr. Chairman: Mr. Ramsay moves that in section 4 the word "minister" be struck out and the word "registrar" be inserted in lieu thereof.

Does everybody understand the amendment? This is still section 4.

Mr. Gregory: We just moved and carried that "minister" be replaced by "board." Now that "minister" is no longer there, Mr. Ramsay is moving that "minister" be substituted by "registrar." I think it is rather redundant. Is that the correct word?

Mr. Wildman: It is not a proper amendment.

Mr. Gregory: It is bloody wrong.

Mr. Chairman: Right. The clerk has shown me a rather fierce ruling that it would be out of order when the amendment was inconsistent with the previous decision of the committee and the previous decision was just made. So I am sorry, I would rule that out of order.

Mr. Ramsay moves that subsection 4(5) of the bill be amended by inserting after "board" in the fifth line "where the issue of provincial interest has been raised under subsection 9(5)."

That is on page 7 of the bill. Is it understood?

Mr. Lane: Could I have a further explanation as to what it says?

Mr. Wildman: I am not going to vote for it unless there is an explanation.

Mr. Chairman: All right. Who is prepared for an explanation on subsection 4(5), inserting after the word "board" in the fifth line "where the issue of provincial interest has been raised under subsection 9(5)"?

Mr. McCombe: Subsection 5 deals with provisions and limitations being added to a licence, varying from the form in which it was put forward by the applicant. This amendment makes it clear that adding such provisions and limitations which derogate from the application can be done only where the public-interest test followed a declaration of provincial interest.

Mr. Lane: What is the layman's explanation of what you just read there?

Mr. McCombe: You have two types of public interest test: the standard one where someone makes out a prima facie case that there may be significant detriment; and the second situation, more limited, where the minister may, because of some sweeping characteristics of this application, make a declaration that this is a matter of provincial interest and give his reasons therefor. That clicks in an opportunity for, first, a possible delay in the hearing; the board may be requested to carry out some broad investigation; policy statements from the Lieutenant Governor in Council: that is the one occasion where the decision can end up with the Lieutenant Governor in Council. That provincial-interest declaration is a very narrow one and in those circumstances this would permit the addition of limiting provisions on that licence application.

Mr. Chairman: Now that it is clear, are there any further comments or questions on subsection 4(5)? Okay, Mr. Lane?

Mr. Lane: I am having difficulty understanding it yet, to be quite honest with you, but I guess that is because I am little bit dumb.

Mr. Chairman: No, I do not think you are a little bit dumb, Mr. Lane.

Mr. Wildman: Subsection 4(5) now says the minister may make the authority subject to provisions and limitation as the minister considers in the public interest and that when there has been a public-interest test hearing conducted by the board--I do not quite understand why this phrase is necessary.

Mr. Chairman: I think that is what is bothering members of the committee.

Mr. Pouliot: Do you intend that the board or the chairman be responsible for all stages of licensing?

Mr. Chairman: All right. Let us try to get an explanation.

Mr. McCombe: The concern in licence rewrite and under this act is that we get away from licences that have a great many limitations, conditions, terms--"Heifers, as long as they are not more than two weeks old"--and weight restrictions. Licences, over the past centuries, because of negotiations between applicants and respondents, have ended up being almost unintelligible, with no two looking alike.

The hope is that licences in future will follow a standard format. One exception was to be where the matter is of such gravity that there is a public-interest test, with a provincial interest declared. In that situation,

as with all of them, where fitness has been found a licence must issue, but in this situation it could be sculpted as the board or cabinet saw fit.

Mr. Wildman: If I understand what you are saying, it is that you want it to be very clear that this is only a province-wide or regional interest that should not be a particular interest.

Mr. Chairman: Is that a little better, Mr. Lane?

Mr. Lane: Yes, it is better now.

Mr. Chairman: You have heard subsection 4(5) and several explanations of it. Any further questions or comments?

Mr. Gregory: I suspect it does complicate it a little bit. It seems to me it gives a bit of a loophole to the ministry staff to delay matters, does it not?

Mr. McCombe: I do not know how it could have that effect.

Mr. Hobbs: It is not intended in any way to delay. As Mr. McCombe indicated, it is to try to provide some guidelines that there would have to be a statement of provincial interest which goes beyond some of the very specific limitations that have existed in the past to deal with matters that may be of a specific market, in fact, or a regional or a provincial interest. It is simply laying those guidelines out as clearly as you can.

Mr. Pierce: I will accept that. I think that if you take subsection 5 out of section 4 in reference to subsection 5 out of 9, you do prolong the process. It gives the minister or the board that extra opportunity to prolong it by allowing a hearing to be postponed until 30 days after the day fixed. It just goes on and on and on, unless I am reading it wrong, when you start passing it back and forth from one section to another in the bill.

Mr. Hobbs: I can only say to you, Mr. Pierce, that is not the intent.

Mr. Pierce: I can appreciate the comment that it is not the intent, but it certainly gives the opportunity to allow that to happen, unless I am reading it wrong and there is an explanation that can explain that reference to that section when the minister already has the opportunity in 4(5).

Mr. McCombe: If I may, this particular amendment will have no effect on time whatsoever. Subsection 9(5) is a lengthy process. As soon as you get into a public-interest test there is going to be time involved, and if there is a declaration by the government that it is a matter of provincial interest there will definitely be time involved, but that is an extremely unusual situation. I would submit that the change in 4(5) has no impact on that time one way or the other; that 9(5) deals with time, 4(5) does not.

Mr. Chairman: Okay. Is that an explanation? Are we ready for the vote on Mr. Ramsay's amendment to 4(5)?

All those in favour of the amendment, please indicate. Opposed?

Motion agreed to.

Mr. Chairman: We are writing legislation here, so members should not hesitate to ask for an explanation.

Mr. Ramsay moves that subsection 4(11) of the bill be struck out.

Mr. Wildman: On a point of order, Mr. Chairman: Would it not be more in order simply to vote against the subsection, rather than to move it be struck?

Mr. Chairman: It really does make more sense simply to vote against it, but the effect of the thing is the same, deleting it or voting against it.

Mr. Wildman: I understand the motion.

Mr. Chairman: But if an opposition member moved that the section of the bill be deleted, I would rule that member out of order and say, "If you do not like it, vote against it."

Mr. Wildman: Exactly. So why does the same not apply for a government member?

Mr. Chairman: I think that to be consistent, if you do not want this part of the bill, vote against it.

Let us go back through the subsections of 4, and when we get to 11 we will take that action.

Shall subsections 4(1) to 4(10), as amended, carry? Carried.

Shall subsection 4(11) stand as part of the bill?

Mr. Gregory: I think the request was that we move against it.

Mr. Chairman: All those in favour? Opposed?

Interjection: Opposed?

Mr. Chairman: Opposed to subsection 4(11) standing as part of the bill. If you are opposed to subsection 4(11) standing as part of the bill, in other words, supporting Mr. Ramsay's intent, you will vote against subsection 4(11) standing as part of the bill.

All those in favour? Opposed?

Section 4(11) is out.

Shall subsections 4(12), 4(13) and 4(14) stand as part of the bill?

Those in favour? Opposed? Carried.

Mr. Offer: Do we not have to close off the section as well?

Mr. Chairman: I thought we did.

Shall section 4, as amended, stand as part of the bill?

Section 4, as amended, agreed to.

On section 5:

Mr. Chairman: I have Mr. Gregory's amendment.

Mr. Ramsay: We have the government amendments that are not written, but I would like to give them orally.

Mr. Chairman: Whose comes first?

Mr. Ramsay: I move that the word "minister" be struck out--

Mr. Chairman: I am sorry. You are on what section, Mr. Ramsay?

Mr. Ramsay: Subsections 5(3) and 5(4).

Mr. Chairman: Mr. Gregory, what are yours?

Mr. Gregory: I have an amendment on 5(1), and I guess that supersedes the request, does it?

Mr. Chairman: Yes.

Mr. Gregory moves that in subsection 5(1) the words "save and except with the approval of the board" be added after the word "transferable."

Mr. Gregory: It would now read, "Operating licences and operating authorities are not transferable save and except with the approval of the board."

Mr. Chairman: Do you wish to speak to that or does anyone require an explanation?

Mr. Ramsay: I think it is self-explanatory.

Mr. Chairman: Are we ready for the vote on that one?

Hon. Mr. Fulton: There is a little explanation going to be offered here.

Mr. Hobbs: Basically, what you are saying is they should be transferable.

Mr. Pierce: Yes.

Mr. Gregory: I think we are saying they are not transferable unless an exception is made by the board.

Mr. Hobbs: In other words, they are transferable.

Mr. Wildman: In exceptional circumstances, they would be transferable.

Mr. Chairman: The board would have to rule on any transfers.

Mr. Gregory: The board would have to rule on them.

Mr. Chairman: Okay? Does everyone understand the amendment moved by Mr. Gregory?

Mr. Gregory: A little more explanation is necessary. In certain cases it would be wise and just to approve a transfer of licence. I am not saying that is so in every case, but I really think it is very wise to allow

the discretion of the board, in certain cases of hardship or what have you, where a transfer of licence is necessary. I do not see what is wrong with that, provided it was not done on a holus-bolus basis every time an application came forward. Surely there is room for some justice in this world, in cases where there is hardship for whatever reason, death or whatever, that a licence could be transferred. I do not see too much wrong with that.

Mr. Chairman: All those in favour of Mr. Gregory's amendment to subsection 5(1) please indicate. All those opposed?

Motion agreed to.

Mr. Chairman: Mr. Ramsay moves that the word "minister" in subsections 5(3) and 5(4) be struck out and "registrar" be inserted in lieu thereof.

You have heard Mr. Ramsay's motion. Are there any comments or questions on it? Could you read that again, Mr. Ramsay?

Mr. Ramsay: Yes, that the word "minister" be struck out in subsections 5(3) and 5(4) and the word "registrar" be inserted in lieu thereof.

1620

Mr. Gregory: I recognize Mr. Ramsay's intent here and I certainly welcome it, but since the trend was set earlier, it would be rather inconsistent and more trouble for the ministry than it would help to have "board" appear in some places and "registrar" to appear in other places.

It is my opinion that the word "registrar" is not much different from "minister," because as the minister has told me today, a registrar is usually an assistant deputy minister. I really do not see that this is much of a change. The intent of my motion was to change that to "board," so we have to vote against that particular motion.

Mr. Chairman: Okay. We had agreed that we could lump several subsections together within a section. Is that agreed by the committee? That is why I allowed Mr. Ramsay to include subsections 5(3) and 5(4).

All those in favour of Mr. Ramsay's amendment to subsections 5(3) and 5(4), please indicate. All those opposed?

Motion negatived.

Mr. Chairman: Mr. Gregory moves that the word "board" be substituted for the word "minister" in subsections 5(3) and 5(4).

Mr. Gregory: I think I have already explained that.

Mr. Chairman: I think everyone understands this one. This is part of Mr. Gregory's package.

All those in favour of Mr. Gregory's amendment, please indicate. Opposed?

Motion agreed to.

Mr. Chairman: What about the wording on clause 5(3)(a)?

Mr. Gregory: I was just reading that, if you could give me a moment.

Actually, where it appears in this particular text, unless my colleagues disagree, it is not part of the intent I had when I brought this motion forward. It is a major departure from my intent. I was going to say I would like to get some advice, but I will not do it at this time. This is an amendment that I had not considered presenting, but it was indicated that it would be--maybe legal counsel can tell me what it means.

Mr. McCombe: I am sorry. I was playing with paper and missed your question totally.

Mr. Gregory: Okay. We are on the brochure presented by the law firm, which I have basically been working from. Do you have that in front of you? We are on clause 5(3)(a), where it says "every issue or transfer of shares of its capital stock or change in beneficial ownership thereof." The addition is "whether the change in beneficial ownership takes place as a result of the issue or transfer of shares of the corporate licensee or as a result of the issue or transfer of shares of any other corporation which, directly or indirectly, controls the corporate licensee; or."

Mr. McCombe: What that is aimed at is trying to prevent change in control of parent companies. I think I mentioned the other day that Power Corp. may have one of 100 subsidiaries that holds an operating licence. With this provision, it would mean, as I understand it, we would be saying that Power Corp. must go to the transport board to have approval of change of ownership of Power Corp. simply because somewhere in the organization it had a subsidiary that was in the trucking business.

We suggested the other day that this appears to be extreme. One can imagine a situation where there are just two companies--one controls the other--and you would like to deal with change in control of the parent. But if you are getting into the gentleman adventurers, the Hudson Bay Co. control changing in England, to say this could not happen without approval of the Ontario Highway Transport Board, is why we did not extend that far.

Mr. Hobbs: It takes you way upstream in terms of the whole corporate ownership area. There is no limit as to how far upstream it takes you.

Mr. Pouliot: Pardon me, Mr. Chairman--

Mr. Chairman: I am sorry. Ms. Hart is next.

Mr. Pouliot: I am seeking an explanation.

Ms. Hart: You may recall that when Mr. Saul made his brief to us he referred to this. He was talking about the transfer of the licences of Yellow Freight Systems and Roadway Inc. and that the major American companies, which had come in recently, had all been transferred by one corporation, not actually the corporation that held the licence but the parent. That is obviously what he is trying to get at.

Mr. Chairman: Okay. Mr. Gregory have you come to a determination?

Mr. Gregory: Yes. As I said earlier, my original intent in going through this was for one specific purpose. There are a couple of exceptions, but this is not one of them. I do not agree with it.

Mr. Chairman: All right. We will not deal with that amendment. Are there any other amendments to section 5? I do not have any in front of me.

Section 5, as amended, agreed to.

On section 6:

Mr. Ramsay: It is the government's intention to vote against subsection 6(3).

Mr. Chairman: Okay. Before that, I have a government amendment to subsection 6(2).

Mr. Ramsay: I move that subsection 6(2) of the bill be amended by striking out, "An operating licence shall to be issued to," in the first line and inserting in lieu thereof, "An application for an operating licence may not be accepted by the ministry from."

Mr. Chairman: I am not too sure the official opposition heard you.

Mr. Gregory: I was being consulted here and I missed the whole discussion. Where are we?

Mr. Chairman: We are on subsection 6(2), and the government has moved an amendment to subsection 6(2).

Now that Mr. Offer has straightened you out.

Mr. Gregory: Mr. Offer is giving me trouble here and I lost my whole train of thought.

Mr. Ramsay: They are trying to cut a deal, Mr. Chairman.

Mr. Wildman: Can I ask a question in regard to the amendment that has just been placed?

Mr. Chairman: By Mr. Ramsay? Yes.

Mr. Wildman: Frankly, I see nothing wrong with the intent of this amendment to subsection 6(2). But it seems to me, for consistency, in regard to the amendments that have already been placed by Mr. Gregory, if we are going to remain consistent instead of saying, "be accepted by the ministry from..." it should be "be accepted by the board from."

Mr. Chairman: Or the registrar.

Mr. Wildman: We are taking ministry and registrar to mean the same thing.

Ms. Hart: Perhaps as a suggestion which may solve the problem, instead of saying who it is accepted by, just say, "may not be accepted," and take out the last part, just so that we can be consistent with whatever we vote on.

Mr. Chairman: All right. Is that what the wish is?

Ms. Hart: I do not know.

Mr. Chairman: I do not want to assume that.

Mr. Pouliot: The intent is from "shall" to "may?"

Interjection: No it is not, it is turning it around.

Mr. Chairman: All right. Can we view that as a friendly amendment to Mr. Ramsay's amendment? It will read as follows, "An application for an operating licence may not be accepted from."

1630

Mr. Lane: It does not really make sense.

Interjection: It has the same effect.

Mr. Chairman: It does, if you read the next part. After that would be, "an applicant who does not hold a certificate," etc. Is that understood? I do not want to rush you. Is that okay, Mr. Gregory?

Mr. Gregory: If the amendment is felt to be worthwhile by the ministry, taking out that section, why not just substitute the word "ministry" with "board"?

Mr. Lane: Who is going to turn it down? That is my question. If it is not the ministry or the board, who is going to turn it down?

Mr. Wildman: Why do you not move an amendment to the amendment?

Mr. Chairman: Let us find out if government members want to accept that first. Mr. Ramsay, what is your intention here?

Mr. Ramsay: Why do we not vote on the amendment and see where we go from there. That is our preferred stance.

Mr. Chairman: You have heard the amendment from Mr. Ramsay, which would read, "An application for an operating licence may not be accepted from," and then would flow into the rest of the section. Is there any further explanation required? Are you ready for the vote? All those in favour of Mr. Ramsay's amendment, please indicate.

All those opposed? Carried. Whoever is making the decisions makes that one.

Mr. Ramsay: As indicated earlier, it is the government's intention to vote against subsection 6(3).

Mr. Chairman: We are dealing with subsection 6(3). Does anyone wish to speak to this? All those in favour of subsection 6(3) please indicate.

All those opposed? It is lost. Subsection 6(3) is deleted from the bill.

Mr. Ramsay moves that subsection 6(4) be amended by striking out, in the first and second lines, "except an applicant for a licence under subsection 3." Is any explanation required?

All those in favour of Mr. Ramsay's amendment please indicate. All those opposed? Carried.

I think Mr. Gregory has an amendment on subsection 6(4).

Mr. Gregory: Did we not cover that under the previous amendment where we covered subsections 3 and 4?

Mr. Wildman: We moved subsections 3 and 4 previously.

Mr. Gregory: I move that subsections 6(4) and 6(5) be amended by changing the word "ministry" to "board."

Mr. Chairman: All right. Mr. Gregory is changing the records from "minister" in subsections 6(4) and 6(5) to "board." Is that understood by the natural governing party?

Hon. Mr. Fulton: I hope Mr. Gregory understands that what he is doing is moving the whole process back to where we started. Having all the applications again heard by the board. We are back to the tribunal. All we are doing is establishing a simple, administrative test, not unlike that application you would enter into applying for your G licence.

Mr. Hobbs: This basically recreates a public necessity and convenience situation.

Mr. Gregory: With great respect, I can appreciate that at no time would any minister of the crown appreciate any of his motions being challenged, but after discussion with my party and some discussion with the New Democratic Party, we are of the opinion that the bill is not perfect. Therefore we feel that by making some amendments, which seem to be carrying so far, we are making it more perfect than it was.

Hon. Mr. Fulton: As long as it was not perfect when we started.

Mr. Gregory: By simply the very same logic, if your bill had been perfect in the first place, then you would not require the vast ream of amendments that I see from you. If you are not happy with my amendments, I apologize for that; nevertheless, we have full knowledge that we are possibly changing the whole thing. I think when you adjust to changing "minister" to "board," you will find that your extensive staff can do that rather quickly. I do not think it changes things too much.

Mr. Wildman: As you know, we are opposed to deregulation per se, and the reason we are voting with Mr. Gregory in this case is that I believe we are in fact making this legislation really re-regulation as opposed to deregulation.

Mr. Chairman: That explanation keeps us on track.

Mr. Pouliot: It is very convenient for the public.

Interjection: It will not keep us on the road.

Mr. Gregory: I have a further amendment to section 6. Where are we? Are we at section 6 now?

Mr. Chairman: You are on subsections 6(4) and 6(5) now, but we have not dealt with those yet.

Mr. Lane: Further to what Mr. Wildman just said, I understood our

Minister of Transportation and Communications to always refer to it as re-regulation.

Mr. Wildman: That is what they said they wanted, so we are giving it to them.

Hon. Mr. Fulton: We certainly have never referred to it as deregulation, if that is what you are suggesting. It was regulatory reform right from the beginning.

Mr. Pouliot: Whatever it takes.

Mr. Gregory: If I may just add a footnote, the minister may recall that I was chairman of the select committee on highway transportation of goods, which produced a very extensive document--I am sure you have read it--1,700 pages, a lot of recommendations, none of which recommended total deregulation. "Re-regulation" is probably a far better term. I think probably what we are doing here is more in line with what we recommended in that report, and I read all 1,700 pages.

Hon. Mr. Fulton: Every week.

Mr. Chairman: Mr. Gregory, frankly it has been a considerable length of time since you moved that amendment. Perhaps you could do it again, so we can vote on it.

Mr. Gregory: I forget where I was.

Mr. Chairman: Subsections 6(4) and 6(5).

Mr. Gregory: Yes, that is right.

I move that the word "board" be substituted for the word "minister" in the fourth line in subsection 6(4) and in the second line in subsection 6(5).

Mr. Chairman: Is that understood? All those in favour of Mr. Gregory's amendment to subsections 6(4) and 6(5) please indicate. All those opposed?

Motion agreed to.

Mr. Gregory: I have a further amendment. In fact, I seem to recall that the first amendment I made carried, where there was a division on section 1, description of the business plan.

Mr. Chairman: Wait a minute. Are you talking about clause 6(5)(a)?

Mr. Gregory: Yes, clause 6(5)(a). In accordance with the amendment which passed on subsection 1(1), where we added "business plan" and the description thereof. I move that the words "the business plan" be added in the seventh line following the word "record" in clause 6(5)(a).

Mr. Chairman: Was subsection 1(1) not defeated, business plan?

Mr. Gregory: Was it defeated?

Mr. Chairman: Yes.

Mr. Gregory: Nice try.

Mr. Chairman: There is nothing wrong with a college try.

Mr. Gregory: We were short-staffed then. I thought maybe that would slip by.

1640

Mr. Chairman: Mr. Ramsay moves that clause 6(5)(a) of the bill be amended by striking out "the directors" in the second and third lines.

All those in favour of Mr. Ramsay's amendment?

All those opposed?

Motion agreed to.

Mr. Pierce: Mr. Chairman, there was an amendment proposed by Mr. Gregory to subsection 6(7). He has withdrawn it, but I would like to discuss that motion.

Mr. Chairman: All right, we will keep that in mind.

Mr. Ramsay moves that clause 6(5)(a) of the bill be amended by striking out "including the applicant's safety, financial integrity and customer service record," in the third and fourth lines, and inserting in lieu thereof, "as disclosed by the."

Is there an explanation sought for that amendment? Yes, there is.

Mr. McCombe: We get back to (inaudible) largely administrative in nature and an examination of convictions, not allegations, complaints or whatever. This would make it clear that it is the conviction record of the applicant or officers in the case of the corporation, under all of those statutes that are listed, plus similar statutes in other jurisdictions.

Mr. Wildman: Will you read it as it will read if it passes?

Mr. Chairman: "The past conduct of the applicant or, where the applicant is a corporation, of its officers"--leave out "and directors"--"including financial integrity."

Mr. Pierce: No.

Mr. Wildman: That is all deleted. That is why I am concerned. Could we read as it will stand if the amendment passes?

Mr. Chairman: All right. Mr. Decker will do that.

Clerk of the Committee: It would read: "The past conduct of the applicant or, where the applicant is a corporation of its officers and directors as disclosed by the"--

Mr. Chairman: No.

Clerk of the Committee: --"of its officers as disclosed by the record of convictions available to the minister under this act," down to the end.

Mr. Wildman: Could I ask why we need to strike that phrase, rather than simply add the phrase "as disclosed by the"?

Mr. Hobbs: The basic reason we chose the fitness test, the objective is to try and make it as much of an administrative procedure with some very clear things that have to be responded to. When you get into the financial integrity and customer service, you are getting into some very general and judgemental areas.

Mr. Wildman: What you are basically saying is that you only want to look at the record of convictions. You do not want to have any discussion of whether or not this guy leaves his customers high and dry.

Mr. Hobbs: Basically, it gets back again to the whole issue of whether you are going to get a public-necessity-and-convenience type of process.

Your interest, combined with the various things that have been put forward, is what you are doing.

Mr. Wildman: What you are interested in is, by striking this, you do not want to deal with questions related to whether or not this person or company has a good service record. You simply want to look at his record of convictions under these various acts, the Highway Traffic Act and so on?

Mr. Hobbs: And how they correspond to the other aspects of the fitness test.

Mr. Pouliot: You are saying as disclosed.

Mr. Wildman: That is why I do not understand why you want to strike it. It relates to the other aspects of the fitness test. Surely applicant safety and financial integrity, at least, if not customer service record, which I think also could be included, relate to the fitness test. Do they not?

Mr. Hobbs: For the safety aspect, he has to file a specific safety plan, and any areas where he has run into problems with respect to safety will be incorporated into his list of convictions.

Mr. Pouliot: That is a natural part of the process.

Mr. Wildman: Sure, but not his financial integrity, unless he has been charged with fraud and convicted or something.

Mr. Hobbs: That gets you into a very judgemental area.

Hon. Mr. Fulton: Financial record is not a judgemental situation, because this attempted to make it an administrative test.

Mr. Hobbs: How do you determine someone's financial integrity? That opens it up to other people saying: "This is not a good operator. He has not had a good record." What do you do?

Mr. Wildman: Basically, that is what is done now, is it not?

Mr. Hobbs: Again, we are trying to move away from a situation--

Mr. Wildman: I understand what you are doing. I am trying to figure out what I want done.

Mr. Hobbs: What we are trying to move away from is the situation where someone comes and alleges that such and such is the case and then the board rules. We think these things are covered to the extent they have to be under the basic fitness test. This would again turn it into a public-necessity-and-convenience type of tribunal hearing.

Mr. Lane: When the word "financial" comes up, it always means money to me. It seems we are saying here we do not care whether the fellow has any financial resources or not; as long as he is a good Sunday school teacher or whatever, he will get the licence. I think the financial resource is important.

Mr. Chairman: No rebuttal to that?

Mr. Wildman: Financial integrity is what is talked about here. That is a very unclear phrase. Not his financial resources or his balance sheet or his bank account or what have you, but financial integrity.

Mr. Hobbs: He pays his provincial taxes here.

Mr. Lane: What does the word "integrity" mean, as opposed to intention, ability or whatever?

Mr. Hobbs: It is a very judgemental thing you are asking, whether it be a registrar, a board or anybody, to take into account.

Mr. Lane: I do not know why it is there if it does not mean anything.

Mr. Wildman: That is right. We think it is very unclear the way it is phrased right now.

Mr. Pierce: It should not be left in there.

Mr. Chairman: Has there been enough discussion on clause 6(5)(a)?

All those in favour of the amendment by Mr. Ramsay to clause 6(5)(a), please indicate. Opposed?

Motion agreed to.

Mr. Chairman: Mr. Ramsay moves that subsection 6(6) of the bill be amended by striking out "July, 1987" in the last line and inserting in lieu thereof "January, 1988."

Mr. Ramsay: This is consistent with the previous amendment.

Mr. Chairman: Any problems with that one? All those in favour of Mr. Ramsay's amendment to subsection 6(6)? Opposed?

Motion agreed to.

Mr. Chairman: Mr. Pierce, I do not see a subsection 6(7). Were you on to something else?

Mr. Pierce: There was an amendment that was proposed that had to do with (inaudible). It was an amendment to 6(7).

Mr. Chairman: Adding a subsection 7?

Mr. Pierce: Right. I am sorry, not an amendment but adding a subsection.

Mr. Chairman: And?

Mr. Pierce: And I would like to move that it be brought forward for discussion.

Mr. Chairman: I do not have it.

Mr. Gregory: It is one of those additions you had, Mr. Chairman.

Mr. Wildman: Page 15.

Mr. Chairman: It is not in my package.

Mr. Wildman: Page 15 is subsection 7(1).

Mr. Chairman: Is it your wish to put this before the committee, Mr. Pierce or Mr. Gregory?

1650

Mr. Wildman: I do not have it in front of me.

Mr. Chairman: Are there any extra copies of this?

Mr. Gregory: It was all part of the package we got from--

Mr. Chairman: Not everybody had it. The clerk is bringing a copy over to you now.

Mr. Wildman: Thank you.

Mr. Chairman: All right. If we are going to discuss this, we need it moved. Will somebody move it?

Mr. Pierce: All right, Mr. Chairman. I will so move the amendment.

Mr. Chairman: Mr. Pierce moves that section 6 of the bill be amended by adding thereto the following subsection:

"(7) An operating licence shall not be issued to an applicant from another jurisdiction, if that jurisdiction does not permit applicants from Ontario to acquire licences to carry on a business described in subsection 3(1) on the same basis as applicants from that jurisdiction."

Mr. Pierce: In explanation of that addition, we heard a number of presenters from either side of the Ontario border, from Manitoba and from the western part of the province as well as the eastern part of the province, who have experienced a number of problems with trucking companies coming in from Quebec and from Manitoba and applying for and receiving authorization to operate in Ontario while, at the same time, Ontario truckers are not allowed to operate in those other two provinces.

Mr. Chairman: Okay. Are there any comments or questions on Mr. Pierce's anti-free trade amendment?

Mr. Wildman: If the ministry wants to respond first, I will be glad to hear what the response is.

Mr. Hobbs: Mr. Chairman, as phrased by Mr. Pierce, I think this is going to be directly discriminatory to interprovincial movement of goods. To that extent, I think it is totally inconsistent with what various governments have been trying to achieve in terms of improving or doing away with the barriers to movement of goods across provincial boundaries.

Second, I think the federal legislation passed this week, which deals with interprovincial trade, is where the jurisdiction lies in terms of the movement to move across provincial boundaries.

If you are going to cast it in terms of the United States, we are talking about introducing a very major irritant in light of the current trade discussions. In 1982, the United States closed the boundary to Canadian trucks over what was alleged to be discriminatory treatment. This provides specific discriminatory treatment in a piece of legislation.

Finally, I think I would say it has some real dangers, as a result of that, in terms of the current operations of Canadian truckers operating now into and in the United States.

Mr. Chairman: This debate is worth pursuing. Mr. Wildman is next.

Mr. Wildman: I have some questions for the ministry in regard to Mr. Pierce's amendment. I would like an explanation as to what the current situation is; that is, under the current legislation. Does the Ontario Highway Transport Board issue public commercial vehicle licences to, say, Quebec carriers or to Manitoba carriers or Michigan or New York state carriers, without reciprocal agreements with those other jurisdictions? That is my first question. I have a number of other questions.

Mr. McCombe: If I may offer an answer, applications to the board are treated without discrimination with regard to where the applicant comes from. As Mr. Hobbs mentioned, in 1982 the US border was closed to us because of an allegation of discrimination. We satisfied the Americans that there is no discrimination; there are different entry criteria in different jurisdictions. The fact that the Americans had ease of entry and most Canadian jurisdictions had public necessity and convenience made it difficult for Americans or Canadians to get licences here. There is no discrimination, and that moratorium was lifted. With regard to this amendment, I have been told unequivocally by the constitutional law branch that this provision would be ultra vires and unconstitutional.

Mr. Wildman: Okay. I do not want to get into that for a moment. Do we have reciprocal agreements with other jurisdictions?

Mr. McCombe: Not with regard to the issuance of operating authorities.

Mr. Pouliot: Dump truck operators do not.

Mr. Wildman: Okay, you say we do not. In other words, you are saying the current situation is that the Ontario Highway Transport Board simply looks at each applicant on the basis of public necessity and convenience. It does not matter what jurisdiction that company is from. If they can show they have customers and those customers need their services in a certain area, they can apply and get a public commercial vehicle licence in Ontario.

Mr. McCombe: That is correct. If I remember, a couple of years ago, the board and ministry were hard pressed to come up with some statistics on how many American licensees there were versus other jurisdictions, because they do not look at them in those terms. They have never had that kind of interest in where their original domicile may have been.

Mr. Wildman: This amendment is apparently aimed at resolving the kinds of problems that were brought before us by the Greater Ottawa Truckers Association. They said they were concerned about Quebec truckers who were operating in Ontario even though Ontario truckers could not get any licences in Quebec because the licences there were, in effect, frozen. That is what this is aimed at. What problem do you see with that?

Mr. McCombe: This solution is unconstitutional. We do not have the capacity to do that. Quebec is not discriminating. Quebec is not issuing to anybody. They are not issuing to Quebecers. It is not anti-Ontario as far as I am aware. They have not issued to anyone.

Mr. Wildman: No. I understand what you are saying, but what they are basically saying is that we should not be giving Quebec licences to anybody in Ontario until such time as Quebec lifts the freeze on licences in Quebec.

Mr. Hobbs: As Mr. McCombe has indicated, the way it is cast, putting that in legislation when you are dealing with another province, is not within the power of the provincial Legislature.

Mr. Wildman: Okay. I do not want to get into the constitutional argument, frankly. Obviously, as a legislator, I would not want to knowingly pass legislation that I believed to be unconstitutional. On the other hand, not being a lawyer, I am not competent to determine whether this is constitutional. Frankly, that is up to the courts, as far as I am concerned.

Mr. Hobbs: We do have a ruling from the legal people who are involved in these matters.

Mr. Wildman: Would the minister be prepared to table the ruling the ministry has which states that this would be unconstitutional?

Mr. McCombe: Because this only came up a couple of days ago, I do not have it in writing. In any event, I would have to get the approval of the Attorney General (Mr. Scott), for whom I cannot speak in this regard, as to whether he would make it public or not. But I will certainly pass on the request to the Attorney General.

Mr. Wildman: Thank you.

Mr. Hobbs: Quite beyond that, I think there is a major problem in terms of Ontario being perceived to be putting up specific barriers. We have concerns about these kinds of problems that are facing Ontario truckers, but also about legislating a barrier to interprovincial trade at a time when not only this government's but also the previous government's stated intentions were to try to remove as many of the barriers to interprovincial trade as possible, the specific ones.

What we are dealing with are some very intangible barriers in terms of Quebec. They are not legislated ones, so I think to counter here with a legislated barrier is not the appropriate way to proceed on this issue.

1700

Mr. Wildman: Before I yield the floor, could I ask our counsel if he could give us some direction in this regard? If there is a freeze in Quebec--I will use that example--on the issuance of licences to anyone, whether he be from Quebec or outside of Quebec, which in effect means that an Ontario operator cannot get a licence in Quebec, is it unconstitutional for us as an Ontario government to pass legislation which, in effect, says that until Quebec lifts the freeze on licences, no Quebec operator can get a licence in Ontario?

Mr. Yurkow: I think it is unconstitutional. I am not a constitutional expert. Quebec is not discriminating against Ontario truckers.

Mr. Wildman: No, they are just treating everybody the same. They are not giving anybody a licence.

Mr. Yurkow: They are treating everybody the same, yes. So I do not think, legally, there is a problem with Quebec's position. I do believe this would likely be ruled unconstitutional.

Mr. Wildman: On what basis? What part of the Constitution?

Mr. Yurkow: I am not a constitutional expert.

Mr. Hobbs: I am not even a lawyer--

Mr. Wildman: Thank God.

Mr. Hobbs: --but the ability to legislate for interprovincial movements is a federal responsibility.

Mr. Pierce: But that is the movement of goods. That is a provision of service.

Mr. Hobbs: No, extraprovincial trucking, the movement of trucks, too.

Mr. Pierce: But carrying a commodity.

Mr. Hobbs: The movement of the truck across the border.

Mr. Pierce: Yes, but you actually work within the borders of an individual province. There is a regulatory authority of the ministry of the province in which the actual work is being performed.

Mr. Wildman: I am not ever sure under that circumstance.

Mr. Chairman: Mr. Wildman, do you have another question?

Mr. Wildman: I will end here. My understanding of what Mr. Pierce is saying is that he is not attempting to have in this bill a provision that would control the crossing of borders by goods, but rather which would control the availability of licences to operate in a particular jurisdiction; that is, not across a border but within a jurisdiction.

Mr. Yurkow: I think you would have a potential Charter of Rights problem as well, in discriminating against Canadian citizens and precluding one Canadian citizen from practising his or her trade.

Mr. Wildman: Yes, okay.

Mr. Pierce: If I may pursue that--and it gets a little bit away from the transportation issue--perhaps you can explain to me how Manitoba and Quebec can exclude Ontario workers from their work force. If that is not unconstitutional, then I do not know how this one could be unconstitutional, because the movement of workers from one province to another is also a federal issue. Yet we have the Manitoba government issuing contracts on a Manitoba government job which restricts the intrusion of Ontario workers. We have a province on the other side of our borders, Quebec, which restricts the intrusion of Ontario workers within their boundary. Would that not also be considered to be unconstitutional?

Mr. Wildman: If I may be helpful--

Mr. Chairman: Wait a minute now. Mr. Pierce has asked a question.

Mr. Yurkow: I cannot speak for the Manitoba and Quebec governments. I think we may well be unconstitutional, but I am not a constitutional expert and it is not something I have looked into.

Mr. Wildman: I do not know about Manitoba, but in Quebec they do not restrict just Ontario residents; they also restrict their own residents; that is, they are treating Quebecers the same way. They have divided the province up into a number of areas and they do not allow workers to travel from one area to the other until the workers within the particular area have already had the opportunity for that job. So they are treating Ontario residents the same way they treat their own residents.

Mr. Pierce: We also do that in Ontario.

Hon. Mr. Fulton: The intent of Mr. Pierce's amendment was, as I gathered, to address the dump truck operators' concerns that were raised here previously, and yet this does not mention it at all.

Mr. Gregory: On a point of order--

Mr. Chairman: Let the minister finish his sentence at least.

Hon. Mr. Fulton: Thank you, Mr. Chairman. It opens up broader questions beyond the operation of dump trucks. I think you are endangering a lot of Canadian operations in the United States. We have 1,100 operators and companies, I am told, currently operating in the United States of America who could be subject to some reprisals to this kind of an amendment.

Mr. Chairman: I have a speaker's list: Mr. Gregory, Mr. Pouliot, Mr. Stevenson.

Mr. Gregory: Mr. Chairman, since it is getting dark out and we have a long way to go, I was going to suggest we could stand this down until we have a copy of the ruling from the Attorney General and get on with the business at hand.

Mr. Chairman: If that is the wish of the committee. Is it agreed we will stand down section 6? Are we standing down the entire section 6?

Mr. Gregory: No. Was that amendment moved?

Mr. Chairman: Yes, it was not voted on because there was a request that it be stood down. Do you wish to deal with the balance of section 6 and let us stand down the amendment?

Mr. Gregory: Yes, stand down the amendment.

Mr. Chairman: All right. Shall section 6(1) through 6(6), as amended, stand as part of the bill? Agreed.

The amendment by Mr. Pierce will be stood down.

Mr. Pierce: Could we have the Minister of Labour (Mr. Wrye) here for the next meeting, Mr. Chairman?

Mr. Chairman: No. It is bad enough now.

On section 7:

Mr. Gregory: I have an amendment on subsection 7(1), if you could allow me to make the same amendment for the subsequent clauses it appears in.

Mr. Chairman: Mr. Gregory moves that subsection 7(1) of the bill be amended by substituting, in the second line, the word "board" for "minister,"

and, in clause 7(3)(a), where it appears twice, "was given to the minister by the applicant, the minister," that both references to "minister" be changed to read "board,"

and, in subsection 7(4), where it appears twice, that "the minister, in his or her absolute" should now read "the board, in its absolute" and "the minister shall hold the hearing" should now read "the board shall hold the hearing,"

and, in subsection 7(5), that the word "minister" in the first line be replaced by "board,"

and, in subsection 7(6), that "and the minister continues to be satisfied...the minister shall issue the licence" now read "and the board continues to be satisfied...the board shall issue the licence."

Mr. Gregory: Are you with me, Mr. Chairman?

Mr. Chairman: Yes, we are on to subsection 7(7) in my book.

Mr. Gregory: For that particular amendment, those are the places it applies.

Mr. Chairman: Are you stopping at subsection 7(6) or going to subsection 7(7)?

Mr. Gregory: I believe I have a whole change there under clause 7(7)(a). Can I make that a new amendment?

Mr. Chairman: Yes. Let me back up a little bit. On section 7, you are replacing "minister" with "board" in subsection 7(1) and in clause 7(3)(a). What about subsection 7(3), in the second line, "file with the minister." Does that stay?

Mr. Gregory: That should be "board," too. I missed that.

Mr. Chairman: Then clause 7(3)(a) twice and subsection 7(4) twice.

Mr. Gregory: Under clause 7(3)(b), there should be one.

Mr. Chairman: It is "board" already. Subsection 7(4) twice, subsection 7(5) twice and subsection 7(6) twice. We will stop there for the moment.

All right. Is subsection 7(7) different?

Interjection: Yes.

1710

Mr. Chairman: All right. Can we deal with Mr. Gregory's first six subsections? It is the same all the way through. Is that understood? All those in favour of Mr. Gregory's amendment to subsections 7(1) through (6), please indicate. Those opposed?

Motion agreed to.

Mr. Chairman: Are the remaining ones to deal with the same principle of "board" versus "minister"?

Mr. Gregory: No.

Mr. Chairman: Then we had better back up a bit and go back to subsection 7(3) for a government amendment.

Mr. Wildman: On a point of order, Mr. Chairman.

Mr. Chairman: Subsection 7(2)--sorry?

Mr. Wildman: Okay. I thought you were going back to subsection 7(3). If you are going back to subsection 7(2), fine. I was just interested in this package that Mr. Gregory has proposed. The words "or misleading" are added in a couple of places. Does he intend to move those?

Mr. Gregory: Yes, I have not got around to it.

Mr. Wildman: All right.

Mr. Ramsay: The government withdraws its amendment to subsection 2 in order to adhere to the other amendments that were moved by the opposition.

Mr. Chairman: Subsection 7(2) stays as it is in the bill now.

Mr. Ramsay moves that subsection 7(3) of the bill be amended by adding at the end thereof:

"And evidence of service of a copy of the request on the applicant."

Subsection 7(3) would read then, "Any person may, within the 30-day period referred to in subsection 1, file with the board a written request." That does not make sense. It does not read properly the way I read it.

Mr. Wildman: Where is this amendment supposed to go?

Mr. Chairman: Unless it goes at the end of clause (b). Even that would not read properly. Do you want to stand this down until we can sort it out?

Mr. Ramsay: Yes, we will stand it down.

Mr. Yurkow: I think that would go as a flush after clause (b).

Mr. Chairman: A flush?

Mr. Yurkow: Yes. It is brought out. It modifies both clause (a) and clause (b).

Mr. Wildman: It still does not read right if it comes after (b).

Mr. Chairman: Where is the verb? You do not have a verb.

Mr. Yurkow: The person will "file with the minister a written request that...the board hold a hearing and evidence of service." The verb is "file."

Mr. Chairman: "File with the minister a written request," and then, "that" (a) and (b). But if you are flowing from (b), it says--

Mr. Yurkow: "And evidence of service of copy."

Mr. Chairman: "File...a written request that...the board hold a hearing to conduct a public-interest test and evidence of service of a copy of the request on the applicant."

Mr. Wildman: It does not make sense. You need a verb.

Mr. Yurkow: The verb is "file."

Mr. Wildman: No.

Mr. Chairman: I know what you are saying, but you are going to have to read it differently than I read it.

Mr. Wildman: It is not proper grammar.

Mr. Chairman: May I suggest that we agree to stand that down until that is worked out?

Mr. Offer: Is that clause (c)?

Mr. Chairman: No, we are standing down subsection 7(3), Mr. Ramsay's amendment.

Mr. Gregory: When you get back to it, would you remind me that I have a further amendment to subsection 3?

Mr. Chairman: Yes. Is there anything further on section 7?

Mr. Gregory: I have an amendment to subsection 7(4).

Mr. Chairman: You have one at clause 7(3)(a) too. Do you wish to move that?

Mr. Gregory: Clause 7(3)(a)? You wanted to set that down, did you not?

Interjections.

Mr. Chairman: Order, please.

Mr. Gregory: Did you not want to set down subsection 7(3)?

Mr. Chairman: This is true.

Mr. Gregory: That is why I did not opt for the amendment now.

Mr. Chairman: All right. We will come back to it when we come back to the rest of subsection 7(3).

Mr. Gregory: Okay. I have an amendment to subsection 7(4).

Mr. Chairman: Mr. Gregory moves that the words "or misleading" be added after "shall be limited to the allegation that false," and then read, "or misleading information was given."

Mr. Gregory: I am adding the words "or misleading."

Mr. Chairman: Where would they fit in?

Mr. Gregory: After the word "false." It reads, "The board shall hold the hearing requested, which hearing shall be limited to the allegation that false or misleading information was given."

Mr. Chairman: That is in subsection 7(4).

The clerk has pointed out a minor thing that I assume would be tidied up by legislative counsel because the word "minister" here was changed to "board," by amendment. It would not read, "the board, in his or her," it would read "the board, in its discretion." I assume that is acceptable for legal counsel to sort out. Okay?

Mr. Yurkow: Yes.

Mr. Gregory: Perhaps I should have added that as another amendment, which I had intended to do.

Mr. Chairman: Okay. Can we go back to Mr. Gregory's amendment to subsection 7(4)? Does anyone need an explanation, or need it read again? Are you ready for the question? Those in favour of Mr. Gregory's amendment to subsection 7(4) please indicate. Opposed? The amendment is carried.

Mr. Gregory: I would like to add that further amendment, where you have directed counsel to clean it up.

Mr. Chairman: All right.

Mr. Gregory moves that the wording be changed to read, "that the board in its absolute discretion."

Is that understood? All those in favour? Opposed? That is carried. We will work that into the amendment.

Is there anything further on section 7?

Mr. Gregory: I have an amendment to subsection 7(5).

Mr. Chairman: Yes, you do.

Mr. Gregory moves that the words "or misleading" be added following "under subsection (4), that false" to read, "under subsection (4), that false or misleading information."

Is that understood? All those in favour of Mr. Gregory's amendment? Opposed? That is carried.

Mr. Gregory moves that in subsection 7(6) the words "such licence as it deems appropriate" appear after--

Mr. Hobbs: Does that mean, Mr. Gregory, you are saying the board can do whatever it wants?

Mr. Gregory: Yes, it issues licences it deems appropriate, in the same way the minister would.

Mr. Hobbs: Virtually every group that is interested in this has indicated that is what it does not want to have.

Mr. Gregory: Could you perhaps give me some arguments why?

Mr. Hobbs: This basically says that without any hearing or what have you, the board can make an assessment and issue such licence as it deems appropriate.

Mr. Wildman: Is that the way it is now? No?

Mr. McCombe: The way it works now is you get respondents and applicants negotiating and they finally come up with wording that both sides can live with. That is the form of licence you get, which is why we have 10,000 licences and 8,000 variations in wording.

1720

Mr. Gregory: So you issue it as applied for.

Mr. Wildman: I am sorry. You did not quite answer my question. Let us say someone has applied for a particular licence. Can the board decide, in its wisdom, to issue a variation on that licence because it felt it was more appropriate?

Mr. McCombe: Yes, the board can do that today.

Mr. Wildman: Does it have to have a hearing to do it?

Mr. McCombe: Yes.

Mr. Gregory: I am a little puzzled here. If an application is made to the board, I think the deputy is saying that the licence issued should be exactly as applied for.

Mr. McCombe: Or denied.

Mr. Gregory: Or denied. If the board deems that maybe the applicant has overstepped himself and that possibly a lesser licence would be more suitable, should there not be some discretion like that?

Mr. Hobbs: Without a hearing?

Mr. McCombe: All industry groups in the last six years of consultation said no. I would respectfully suggest this goes in the opposite direction to subsection 4(5), which was carried earlier, where you remember provisions and limitations would only be added after a public-interest test where a provincial interest had been declared.

Certainly, the concept of those involved over the last six years in developing this said that an applicant should frame his application correctly, go with it, win or lose on that application, and not go on a fishing expedition by asking for the world and then negotiating with lawyers of various parties down to something where they would withdraw their opposition and the applicant could deal with it.

The licence rewrite project which has been under way will be totally frustrated by this because licence rewrite is to get down in a standard format wording without all sorts of provisos.

Mr. Gregory: Mr. Chairman, I withdraw that amendment under subsection 7(6). So it will continue to read, "the board shall issue the licence applied for."

Mr. Chairman: All right. Subsection 7(7). Now this is where you have added (a) to subsection 7(7), I think, Mr. Gregory.

Mr. Wildman: The importance of this is that the board could initiate a hearing, if it decided to, even if it was not asked for.

Mr. Gregory: I will not be proceeding with this amendment.

Mr. Chairman: Okay. It has not been moved so there is no problem.

Is there anything on subsections 7(8), 7(9), 7(10), 7(11), or 7(12)? I have nothing further in front of me on section 7.

We have stood down subsection 7(3). Do you want to continue to stand that down? Mr. Ramsay, we had agreed to go back to subsection 7(3), your amendment.

Mr. Ramsay: Could we go back to subsection 7(2)? It is the government's intention to vote against that subsection because the corridor licence is really covered by the federal legislation. To clean up this act, it would be better to delete it.

Mr. Chairman: Subsection 7(2)? Okay. That does not deal with subsection 7(3) yet. We are dealing with subsection 7(2) first, right?

Mr. Wildman: On a point of order: My understanding is that the government dropped subsection 7(2).

Mr. Chairman: That is what he is saying.

Mr. Wildman: They said that before.

Mr. Offer: We withdrew the amendment.

Mr. Chairman: Now they want to drop the section.

Mr. Wildman: Oh, the whole section. All right.

Mr. Chairman: On subsection 7(2), those who agree with Mr. Ramsay's intention to drop this would vote against the section.

Those in favour of subsection 7(2), please indicate. Opposed? Subsection 7(2) is defeated. Therefore, it does not remain part of the bill.

Subsection 7(3) is the subsection we stood down. Is there any comment on that now, or do you want to still leave it?

Mr. Ramsay: No, we are waiting.

Mr. Chairman: You are still waiting on that? All right.

Mr. McCombe: Can I make a suggestion? One word was left out of the amendment; it should be "and file evidence of service." It comes back out at the margin, "(3) Any person may, within the 30-day period referred to in subsection 1, file with the minister a written request that" (a) or (b), "and file evidence of service of a copy of the request on the applicant."

There are two duties on the person: one is to file with the minister, board, whoever it may be at this point in time; and the other is to file evidence of service.

Mr. Chairman: Do members understand? Now it at least reads properly. Do you want to deal with subsection 7(3)?

Mr. Ramsay: Yes, let us proceed.

Mr. Chairman: Mr. Ramsay moves that subsection 7(3) of the bill be amended by adding at the end thereof "and file evidence of service of a copy of the request on the applicant."

Those in favour? Opposed? Carried.

Mr. Gregory moves that clause 7(3)(a) be amended so that the words "or misleading" follow the word "false."

Agreed? Carried.

Let us go back and complete section 7. Shall section 7--

Interjection: As emasculated.

Mr. Chairman: --as emasculated, as someone whispered in my ear. Shall subsections 7(1) through (13), as amended--that should include the deletion--stand as part of the bill? All those in favour? Opposed? Carried.

Section 7, as amended, agreed to.

On section 8:

Mr. Chairman: Mr. Ramsay moves that section 8 of the bill be amended - by striking out "7(12)" in the third line and inserting in lieu thereof "7(13)."

Mr. Ramsay: This is just a housekeeping procedure.

Mr. Chairman: That is carried.

Mr. Gregory moves that the word "minister" be deleted and the word "board" be inserted in lieu thereof in the first and third lines of section 8.

Are you ready for the question? All those in favour of Mr. Gregory's amendment, please indicate. Opposed? Carried.

Section 8, as amended, agreed to.

On section 9:

Mr. Chairman: Mr. Ramsay moves that subsection 9(1) of the bill be struck out and the following substituted therefor:

"(1) A hearing to conduct a public interest test pursuant to a request under clause 7(3)(b) shall be held only if the person who asked for the test makes out a written case to the board that,

"(a) the granting of the operating authority applied for would be likely to have a significant detrimental effect on the public interest using the criteria set out in subsection 10(1); and

"(b) the request is not purposely made."

Any explanation or questions on subsection 9(1)?

Mr. Wildman: Is this to respond to Mr. Saul's concern about this being in line with the federal legislation?

Mr. McCombe: It does two things. It changes "will" to "likely," and it also brings the wording into almost a duplication of the wording under the federal Motor Vehicle Transport Act, which the board will also administer. It is felt to be a clearer wording than what was in the bill.

Mr. Chairman: Are you ready for the question? Shall Mr. Ramsay's amendment to subsection 9(1) carry? All those in favour? Opposed? Carried.

Mr. Gregory moves that the word "minister" be deleted and the word "board" be inserted in lieu thereof in subsection 9(2).

Mr. Gregory further moves that clause 9(3)(a) be amended by adding the words "or the board" after the word "minister."

What about subsection 9(4)? You are not touching that.

Mr. Gregory: No.

Mr. Chairman: Anything else in section 9 dealing with "board" versus "minister"?

Mr. Ramsay: Yes.

Mr. Chairman: I am sorry, just a minute. We are dealing with Mr. Gregory's amendments dealing with "board" versus "minister."

Mr. Gregory: I have nothing further.

Mr. Ramsay: I would like to speak to it.

Mr. Chairman: We are dealing with subsections 9(2) and 9(3) concerning only the change from "minister" to "board" at this moment. Okay?

Mr. Gregory: Not quite. In subsection 9(2), you are changing the word "minister" to "board" on two occasions, and in clause 9(3)(a) you are adding the words "or the board" after "minister."

Mr. Chairman: Correct. Thank you.

Mr. Ramsay: It is the government's view that subsection 9(2) should remain the way it is in order to be consistent with what was passed in subsection 7(7), "The minister may direct the board to hold a public interest test and, where the minister so directs, the board shall hold the hearing."

Mr. Chairman: Mr. Ramsay makes a good point, Mr. Gregory.

Ms. Hart: Further on that point, to be consistent, you will not only want the minister to publish reasons in the Ontario Gazette for a hearing, but you will want the board to publish reasons. In your scheme, you have the minister and the board having the ability to trigger a public-interest hearing. To be consistent, you have to treat them both the same way, and so both should have to publish their reasons. Instead of changing "minister" to "board," we should be adding "board" to "minister."

Mr. Gregory: We will add "board" after "minister." It will read, "minister or the board."

Ms. Hart: In your scheme, to keep it consistent.

Mr. Gregory: I will do that then. Instead of changing "minister" to "board," if we could add "or the board" after "minister" in both cases.

Mr. Chairman: In subsection 9(2) only?

Mr. Gregory: Yes.

Mr. Chairman: Is that clear? Is there any further debate on that?

Mr. Gregory: May I ask the legislative counsel if that makes sense.

Mr. Yurkow: It seems to make sense to me, at this stage.

Mr. Gregory: If it makes sense to you, it makes sense to me.

Mr. Chairman: Carried. Subsection 9(2) will now read: "A hearing to conduct a public interest test pursuant to the direction of the minister or the board shall be held only after the minister or the board has published, in the Ontario Gazette, the reasons for wanting the hearing."

Is that correct? All right. All those in favour of Mr. Gregory's amendment, please indicate. Opposed? Carried.

If we go back to subsection 7(7), does that still make sense? "The minister may direct the board to hold a public interest test and, where the minister so directs, the board shall hold the hearing." Then you say, "A hearing to conduct a public interest test pursuant to the direction of the minister or the board...." It will read as if the board were directing itself to hold a hearing. The board will direct the board to hold a hearing, or the minister could direct the minister to hold a hearing.

Mr. Gregory: You are suggesting that by changing section 9, we have fouled up section 7.

Mr. Chairman: That is what I think. I am not a legislative wizard.

Mr. Gregory: I am not, either. Maybe legislative counsel can help us out on this section.

Mr. Yurkow: I think that is correct. It does not fit in with section 7, if you change it.

Mr. Chairman: The only way the two are compatible, it seems to me, and I am not casting a pejorative judgement on it here, is that if you leave subsection 9(2) the way it is, then subsection 7(7) makes sense. I am not trying to discourage amendments, but I think it will not work if you change subsection 9(2) the way you have.

Mr. Yurkow: I agree with that.

Mr. Gregory: All right. I move it be reopened.

1740

Mr. Chairman: Is it agreed that we reopen subsection 9(2)? Agreed? Unanimous consent? All right.

Mr. Gregory: I now withdraw my amendment.

Mr. Chairman: Mr. Gregory withdraws his amendment and subsection 9(2) will stand as it was printed by the Ministry of Transportation and Communications. Is that agreed?

All right, now subsection 9(3), Mr. Gregory? Hang in there.

Mr. Gregory: I am trying to.

Mr. Chairman: Mr. Gregory moves that clause 9(3)(a) be changed to read "where the hearing is initiated by the minister or the board, on the applicant or the operating authority."

You may want to reconsider that one as well, although I would not want to urge you to.

Mr. Gregory: I am not so sure.

Mr. Wildman: I have a question.

Mr. Chairman: Yes, Mr. Wildman?

Mr. Wildman: Previous to this, in the bill, have we given the board the option of calling a hearing on its own initiative?

Mr. Chairman: An example of that does not jump to mind.

Ms. Hart: It is complicated. It is not in the Public Commercial Vehicles Act, but under the Ontario Highway Transport Board Act. I think it used to be section 17. The board had the right, on its own initiative, to call a review, but there have been some cases stemming out of that which say there were not the procedural protections. It was not exactly like this, but you were looking for an example of where the board was--

Mr. Wildman: Yes, I understand what you are saying. However, I recall, rather vaguely by now, that at one point in the bill there was an amendment to that effect, which I thought was defeated. On the top of page 16 in this package, what happened to that proposed amendment to clause 7(7)(a)? What happened to it?

Mr. Yurkow: It died.

Mr. Gregory: Or was it withdrawn?

Mr. Wildman: On the top of page 16, in the package you gave us, was that presented? It was withdrawn. All right, fine. Thank you.

Mr. Chairman: Mr. Gregory, what have you decided?

Mr. Gregory: I would like to reopen that clause 7(3)(a), and withdraw my amendment.

Mr. Chairman: Is that agreed? All right, there is no amendment then to subsection 9(3). Is there anything else on section 9? No further amendment? Let us go back and deal with it, then.

Shall section 9, subsections 9(1) through 9(8) inclusive, as amended, stand as part of the bill?

Section 9, as amended, agreed to.

On section 10:

Mr. Chairman: We are at section 10, now. Is there anything before subsection 10(3)? Yes, there is. Mr. Gregory has an amendment on 10(1).

Mr. Gregory: I move that subsection 10(1) be amended--I just have to find out how. Just hold on a moment.

Mr. Chairman: Perhaps I could help. In line 4 of the existing printed bill, Mr. Gregory would, after the word "would," like to add the words "likely be detrimental"--

Mr. Gregory: --"to the public interest."

Mr. Chairman: Right. Go ahead.

Mr. Gregory: Right. Under subsection 10(1).

Mr. Chairman: Go ahead, Mr. Gregory.

Mr. Gregory: You just said it. I move that the subsection be amended by adding the words "likely be detrimental to the public interest" after--

Mr. Chairman: After the word "would" in the fourth line.

Mr. Gregory: Yes, after the word "would" in the fourth line.

Mr. Chairman: Okay, but you have something else added to it.

Mr. Gregory: Right. It is virtually the same bloody thing, is it not?

Mr. Wildman: I do not see the significant difference between what is being proposed in the amendment and what is already there, except for the word "likely" and the word "significant." "Likely" is proposed and "significant" is--

Mr. Gregory: "Likely" is the major change there. That is right. Mr. Chairman, I withdraw those amendments. I think basically they are saying the same thing. We are adding only one word. We are trying to convey the appearance of what is back of them.

Mr. Chairman: Okay. Are you saying that about all of subsection 10(1), where you have that list?

Mr. Gregory: Yes. Under subsection 10(1), there were two possible amendments indicated. I am saying withdraw those.

Mr. Chairman: Right.

Mr. Gregory: Under paragraph 10(1)1, "The existence of a dependable and viable trucking industry," add the words "throughout the province."

Mr. Chairman: All right. You want that to stay?

Mr. Gregory: Right.

Mr. Chairman: Oh, I see. Okay. So Mr. Gregory is not moving his amendments which deal with subsection 10(1); he is leaving in place his amendments on paragraphs 1, 2 and 4. So you are to move them.

Mr. Gregory: The one I just moved?

Mr. Chairman: Paragraphs 1, 2 and 4.

Mr. Gregory: Paragraphs 1, 2 and 4, as you have it written on your report. In 2, we are adding "and receivers" and in 4, we are adding the word "regional."

Mr. Chairman: All right. Do members understand what Mr. Gregory is amending here? He is amending paragraphs 1, 2 and 4, as indicated by the underlined sections. Any questions or comments? Are members ready for the questions? Okay. I find it hard to believe.

All those in favour of Mr. Gregory's amendment to paragraphs 10(1)1, 2 and 4, indicate. Opposed? Carried.

Anything else on subsection 10(1)? Anything else on subsection 10(2)? Mr. Gregory has.

Mr. Ramsay: I have also.

Mr. Chairman: Okay, we have a new one on 10(2).

Mr. Ramsay: It may satisfy Mr. Gregory, actually.

Mr. Chairman: Mr. Ramsay moves that subsection 10(2) of the bill be struck out and the following substituted therefor:

"(2) Where, after a hearing to conduct a public interest test, the board finds that granting the operating authority applied for would not have a significant detrimental effect on the public interest in the market proposed to be served, the board shall so report to the minister and recommend that the minister grant the authority applied for.

"(2a) Where, after a hearing to conduct a public interest test, the board finds that granting the operating authority will have a significant detrimental effect on the public interest in the market proposed to be served, the board shall so report to the minister and recommend that the minister,

"(a) grant the authority applied for subject to a limit on the number of commercial vehicles authorized to be operated thereunder in the first, second, third and fourth years following the issuing of the licence; or

"(b) where the issue of provincial interest has been raised under subsection 9(5), issue an operating licence with provisions that vary from those applied for."

1750

Does anyone wish to speak to those amendments or ask any questions?

Mr. Gregory: I am curious about the last section. We are now talking about issuing an operating licence with provisions that vary from those applied for. I thought we wanted to stay away from that.

Mr. McCombe: This was the example where a provincial interest has been declared.

Mr. Hobbs: This is a clarification of the safety net provisions that a number of people have indicated, including the trucking industry, is desirable. In terms of the utility of whether it is the minister or the board to deal with freight restrictions when it is proven there is going to be a serious negative impact on a particular market, whether it be provincial or regional--

Mr. Gregory: We have a little problem with this one. All the way through the piece, up until now, we have been recommending, and it has been passing, that the board replace the minister in terms of authority. Now we have an amendment here which, in the end of the first paragraph of subsection 10(2), says, "the board shall so report to the minister and recommend that the minister, (a) grant the authority applied for." It seems to be contrary to what we have been doing all afternoon. Is there some other wording we could use to make it coincide?

Mr. Wildman: Just delete the words after "board."

Mr. Gregory: Will the minister accept that amendment?

Mr. McCombe: It is suggesting then the board is self-contained in the licensing activity. It would end up "the board shall grant the authority applied for." It deletes, "so report to the minister and recommend that the minister."

Mr. Wildman: What we need is an amendment to the amendment.

Mr. Pierce: Unless you want to change the amendment.

Mr. Ramsay: That is what we will do.

Mr. Gregory: It will now read, "the board shall." Take out "so report to the minister and recommend that the minister." Then continue on with, "grant." You would read "the board shall, (a) grant the authority applied for."

Mr. Ramsay: We will accept that as a friendly amendment.

Mr. Gregory: Then there is clause 10(2)(a), same amendment. Will you accept that?

Mr. Ramsay: The same is acceptable.

Mr. Gregory: Is that the revised amendment? Does that do it?

Mr. Ramsay: We want to get a clarification here, in the case of a public interest being declared, if this is acceptable to the minister.

Mr. Wildman: The same thing applies, "where the issue of provincial interest has been raised under subsection 9(5), the board shall issue an operating licence with provisions that vary from those applied for." The board is doing it again.

Mr. Offer: Subsection 10(2) talks about cases where there would not be a public interest type of problem, whereas subsection 10(2a) talks about the situation in which, after the hearing, the board finds there would be a significant detrimental effect. Only in that case would the board report to the minister and recommend to the minister that he could do either (a) or (b). But that is only in the position where, after the board has had its hearing, it finds there could be a detrimental effect.

On that basis, we would think, although we agree that in subsection 10(2) the words "so report" as we have indicated should be taken out, they ought not to be in subsection 10(2a) because we are talking about a different finding by the board.

Mr. Chairman: So you would want it left in in subsection 10(2a)?

Mr. Offer: Yes.

Mr. Chairman: If I understand the government members now, they are saying that in subsection 10(2) the words "so report" are taken out but not in subsection 10(2a). All right? That is the change in the amendment. They are changing that in their own amendment.

Mr. Stevenson: Run over that again.

Mr. Offer: The reason we would agree with it in subsection 10(2) as opposed to (2a) is that the fact situation from the board's position is different. In (2), it made a finding with respect to the public interest test that the granting of the operating licence would not have a significant detrimental effect and as such it should grant the licence. In (2a), it has made the finding that it would have a detrimental effect and so, carrying on

with (2a), it should report that finding to the minister and the minister should make the type of decision founded in clauses 10(2a)(a) and 10(2a)(b).

Mr. Wildman: What is your point? Why in one case are you saying that you will accept that the board should do it, but in the other case that the board should only recommend to the minister?

Mr. Offer: From the basis of the finding of the public-interest test, the decision by the board--I stress by the board--has been different. We are suggesting in subsection 10(2a), because that is talking about the situation where there has been a finding by the board of a significant detrimental effect, that the board should report that to the minister and the minister make that decision.

Mr. Chairman: Okay. I do not think we want to rush members on this section any more than we have on any other, yet we are running out of minutes. May I suggest that we not complete our discussion of section 10? Right. We will have concluded our discussions down to--

Mr. Ramsay: Are you ready for a vote?

Mr. Chairman: Are members ready for the question?

Mr. Gregory: We are not ready to accept the amendment as it has been proposed. We feel the wording in both subsections should be the same. If the member is ready to present the amendment that way, we will support it.

Mr. Chairman: Are you ready for the question?

Mr. Gregory: What is the question on? We have not got a determination yet as to what the amendment is.

Mr. Chairman: All right. We will not deal with section 10.

Mr. Ramsay: In order to clean it up, we would be prepared to keep the amendment the way we originally had proposed it.

Mr. Chairman: All right. Are you ready for the question?

Mr. Pierce: The amendment as originally proposed.

Mr. Ramsay: As proposed, except the word "likely" is removed. That is all.

Mr. Pierce: Except for the word "likely," everything else stays in. The "so report to the minister" shall stay in both subsections?

Mr. Chairman: No, it will be taken out of both of them.

Mr. Pierce: No. he is saying they should stay.

Mr. Wildman: We want it as originally printed, please.

Mr. Pouliot: Do you want to wait until tomorrow, another time or do you want to put it now?

Mr. Chairman: Order. The House has just adjourned, so let us make a decision. We will not deal with section 10 at this point. The decision the

committee must make is what we will do with Bill 150, as amended to this point, and Bills 151 and 152. We have a choice. Because our time is committed to the health and safety bill and because hearings are already scheduled and people notified, we must do one of two things with this bill.

One, we simply leave it on our agenda to be dealt with after the health and safety bill, which I assume would be some time in the fall, but maybe not even early fall. The other alternative is to report, on instructions from the committee, this bill as amended plus the other two bills back to the committee of the whole House and let the Legislature, through the three House leaders, deal with it as it will. At that point, the minister and his House leader would have to determine when to call it for debate.

Mr. Gregory: If it were referred back to the House, then have we undone all we have done today?

Mr. Chairman: No. It would be reported as amended.

Mr. Gregory: As amended. Then we would carry on in committee?

Mr. Chairman: Exactly.

Mr. Gregory: We will carry on just as we are doing here?

Mr. Chairman: Right.

Mr. Gregory: Whatever the minister wants.

Mr. Chairman: Mr. Ramsay moves the committee report it back to the House. All right. Are you ready for the question? Shall Bill 150, as amended to date, and Bills 151 and 152 be reported back to the house? All in favour? All those opposed? It is carried.

Bill 150, as amended, ordered to be reported.

Bills 151 and 152 ordered to be reported.

Mr. Chairman: I shall report these bills back to the House, Bill 150 as it was amended here today, and then Wednesday afternoon we will hear representations on the health and safety bill. Are there any other questions before we adjourn?

Mr. Gregory: I have just one question. Are we referring it back to the House or are we referring it back to committee of the whole House?

Mr. Chairman: It is just referred to the House.

Mr. Gregory: Does that require a motion in the House that it go to the committee of the whole House?

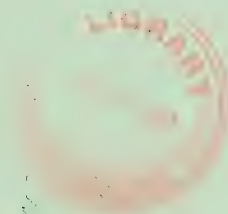
Mr. Chairman: Yes. All I do is stand up and refer it back.

Interjection: Or back here.

Mr. Chairman: They could, if they wanted to, report it back.

The committee adjourned at 6:04 p.m.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT
OCCUPATIONAL HEALTH AND SAFETY AMENDMENT ACT
WEDNESDAY, JUNE 24, 1987



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, F. (Nickel Belt NDP)

VICE-CHAIRMAN: Reville, D. (Riverdale NDP)

Bernier, L. (Kenora PC)

Caplan, E. (Orillia L)

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McGuigan, J. F. (Kent-Elgin L)

Offer, S. (Mississauga North L)

Pierce, F. J. (Rainy River PC)

South, L. (Frontenac-Addington L)

Stevenson, K. R. (Durham-York PC)

Wildman, B. (Algoma NDP)

Also taking part:

Hart, C. E. (York East L)

Martel, E. W. (Sudbury East NDP)

Pollock, J. (Hastings-Peterborough PC)

Clerk: Decker, T.

Witnesses:

From the Ontario Public Service Employees Union:

Clancy, J., President

Usher, S., Director, Education and Campaigns

DeMatteo, R., Research Officer

Rothney, K., Shop Stewart

From the Ontario Federation of Labour:

O'Flynn, S., Secretary-Treasurer

Jolley, L., Director of Safety and Health

Turk, J., Education Director

Jackson, F.

Perrotta, K.

DeMatteo, R.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, June 24, 1987

The committee met at 4:05 p.m. in committee room 1.

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT ACT

Consideration of Bill 149, An Act to amend the Occupational Health and Safety Act.

Mr. Chairman: I see a quorum. We commence today's public hearings on Bill 149, and we have a full afternoon ahead of us, as we do tomorrow afternoon. The plan of the committee is to hold these hearings the next two days, and then it is presumed that the Legislature will adjourn for a while. Unless exciting events intervene, we shall be holding hearings again starting in September on this same bill. We have not set dates for that yet and would like to nail down the dates tomorrow before members head back to their ridings.

Without any further ado, we will begin. The first group is the Ontario Public Service Employees Union, and Mr. Clancy the president is here. Mr. Clancy, if you would introduce your colleagues and begin, we are ready for you.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Mr. Clancy: With me today to my immediate right is Sean Usher, the director of research education and campaigns for the Ontario Public Service Employees Union. To my immediate left is Bob DeMatteo, senior officer in charge of health and safety with OPSEU, and to his immediate left is Keith Rothney, an OPSEU member who heads up our inspectors working for the Ministry of Labour in the field of health and safety.

Our comments here are specifically directed to our concerns in regard to our members who are members of OPSEU and, of course, we are being followed by the Ontario Federation of Labour which will address a number of our concerns which could be described as more broadly addressing the legislation before you. I intend to read into the record much of the comment we want to make on the issue before us.

The Ontario Public Service Employees Union represents approximately 95,000 workers who hold a variety of jobs in the public sector throughout Ontario. Our membership also includes occupational health and safety inspectors who enforce the work place safety laws of the province.

Contrary to popular belief, all these varied public sector jobs entail risks to the health and safety of these workers. Increasing numbers of our members have been killed, maimed and poisoned, as a result of hazards in the work they perform.

When the current Occupational Health and Safety Act came into force in 1979, our union had great hopes that this legislation would provide increased protection for our members. Unfortunately, the experience over the last eight years has proved disappointing.

Between 1980 and 1985 there were 22 work-related fatalities reported by

the Workers' Compensation Board for OPSEU's major bargaining units. In 1985 there were 5,607 compensable injuries suffered by our members. This represents a 27 per cent increase since 1980. In 1985 there were 170,076 work days lost due to work-related injuries, a 33 per cent increase since 1980.

In the provincial correctional services there was a 53 per cent increase in injury claims and a 171 per cent increase in disease claims between 1980 and 1985.

Workers in provincially operated health care facilities do not fare well either. Between 1980 and 1985 there was a 20 per cent increase in accident claims and an 85 per cent increase in the number of disease claims in these facilities. Ambulance service workers suffered a dramatic 98 per cent increase in work-related accidents and diseases in the same period.

Health care work is often and wrongly viewed as safer than heavy industry, but this is not borne out by the facts. In 1983 there were 255 nonfatal accidents for every 1,000 employees in psychiatric hospitals in Ontario. This compares to 36 for every 1,000 employees in the mining sector.

While the percentage of police and fire personnel filing WCB claims is approximately 11 per cent, close to 14 per cent of all psychiatric staff make lost-time claims to the board.

These comparisons are not intended to underestimate or downplay the significant hazards in other occupations. They are meant to dispel the myth about the safety of public sector work. While these figures are startling, they only represent the tip of the iceberg. They do not include all the injuries and illnesses that are either rejected by the board or remain unrecognized and unreported.

1610

A report appearing in Occupational Health in Ontario by Dr. Annalee Yassi shows that well over 50 per cent of claims for serious work-related diseases and 63 per cent of cancer claims are rejected by the Workers' Compensation Board. It is conservatively estimated that there are some 700 work-related cancer deaths a year in Ontario, yet only 95 cancer deaths were reported to the board and only 44 of these were accepted as compensable. This is less than one out of every 17 occupational cancer deaths.

Office workers across this province fare little better than others in the public sector. They are plagued by indoor pollution and problems caused by overcrowding. Growing numbers of office workers are crammed into new technology sweatshops where inhuman quota systems and electronic monitoring are creating many work place illnesses.

For example, in the Ministry of Health's Ontario health insurance premium operation in Sudbury, seven out of 11 data entry clerks have developed debilitating repetitive strain injuries. Four of these people have been awarded workers' compensation for these injuries. In the Hamilton OHIP operation, results of a health study conducted by OPSEU in 1984 showed that 63 per cent of workers developed respiratory problems related to poor air quality. Similarly, 64 per cent developed musculoskeletal problems as a result of poor work station arrangements.

Our study was confirmed by a 1984 Ministry of Labour work place assessment showing that the air was contaminated with carbon dioxide and

formaldehyde and that work station arrangements were clearly unsatisfactory. Four years have gone by since these results were published by the Labour ministry and nothing has been done to improve the situation.

The reasons for this increasing toll in work place accidents and illnesses arise from basic flaws in the present Occupational Health and Safety Act and the current system of enforcing it. There are deep-seated problems in the administration and enforcement of the current health and safety legislation. These problems have been brought to our attention by those in a strategic position to understand and experience them on a routine basis, that is, the health and safety inspectors.

In an effort to have these problems addressed, the inspectors submitted a brief to the Minister of Labour (Mr. Wrye) on May 21, 1986. That brief detailed how the enforcement of safety legislation was being intentionally and systematically thwarted and, in effect, confirmed many workers' complaints about poor enforcement.

In response to these charges, the minister commissioned Geoff McKenzie of the Coopers and Lybrand consulting firm and John Laskin of the legal firm Davies, Ward and Beck to conduct an internal inquiry into the operation of the ministry's occupational health and safety division.

Unfortunately, the two-volume report released on January 12, 1987, was an extremely disappointing document. In our view, it amounted to a whitewash of division management and it betrayed the assurances we had been given that a private inquiry would adequately examine the issues raised by the inspectors and by others in the labour movement.

The inquiry absolved the division administration of any wrongdoing in the 71 cases it investigated. It said the division was simply carrying out the self-compliance philosophy of the internal responsibility system. The inquiry found incidents of unfortunate delays of up to two years, division managers subverting inspectors' orders, too many repeat orders, allowing the one-year statute of limitations to run out on serious charges, missed court dates, political interference and even negligence, but no misconduct.

It is our view that conducting this inquiry internally rather than publicly and the use of private consulting firms was a disservice to the public. With respect to Mr. McKenzie and Mr. Laskin, it is important to bear in mind that both represent corporate clients almost exclusively. Indeed, it is our understanding that Mr. Laskin was recently retained by the National Citizens' Coalition in its fight against the union shop.

The conclusions and recommendations of their review of the health and safety division were at odds with the findings of independent studies conducted by the minister's own Advisory Council on Occupational Health and Occupational Safety, the Ontario Law Reform Commission and the Provincial Auditor. They were also at odds with the recommendations and findings of successive coroner's juries.

Representatives of the advisory council, the law reform commission and the Provincial Auditor should be invited to these hearings. Since they have all dealt with these problems at considerable length, they should have an invaluable contribution to make to this committee's consideration of needed reforms to the Occupational Health and Safety Act.

Ironically, within two years of the enactment of Bill 70, enforcement

budgets in the division were drastically reduced. Between 1981 and 1986, the inspectorate's staff level was reduced by approximately 14 per cent. The present staff of all three field branches consists of just over 200 inspectors, who are responsible for 89,424 registered industrial plants, construction projects and mining establishments. This total does not include an estimated 80,000 to 120,000 firms that have not been registered and are thus not inspected. While efforts are being made to register these work places, we cannot expect that they will receive proper attention with the current staff levels.

By contrast, there are more than 500 staff allocated for the protection of our fish and wildlife. This is a worthwhile allocation of resources. We only ask that similar consideration be given to the protection of workers.

While the number of work places registered by the division increased since 1981, the number of routine inspections declined by more than 22 per cent. In the industrial safety branch, for example, there are a few more than 100 inspectors to cover a total of 65,732 registered firms which should be routinely inspected. But in the 1985 fiscal year inspectors made only 41,628 visits, leaving a backlog of more than 8,000 scheduled inspections.

Because inspections are largely dependent on meagre enforcement budgets, visits by inspectors are limited to investigations of work refusals, complaints and critical injuries or fatal accidents. Many work places, approximately 24,000, were taken off routine inspection cycles as a matter of division policy in the 1985-86 fiscal year, an increase of 36 per cent from the year before.

As the auditor's report for 1986 indicates, many work sites with serious health hazards fall through the cracks in this system. This dangerous situation appears even more glaring when we consider that very few joint health and safety committees set up to monitor work places are actually functioning and that such committees are practically nonexistent in smaller, nonunionized plants.

Coupled with the fact that a large proportion of plants are not monitored is the division's dismal record on legal enforcement. We have noted previously in our inspectors' briefs that there is a resolute reluctance to enforce compliance with the act.

In the industrial health and safety branch, there were more than 50,000 orders issued for the fiscal year 1985-86. In that same period, 292 charges were laid, 69 of which led to successful conviction. That is, less than one per cent of all orders resulted in charges being laid and an even smaller percentage ever led to a successful prosecution. Three quarters of the charges were either withdrawn by the ministry or dismissed by the courts. Fully 62 per cent of all charges were either withdrawn through plea bargaining or by senior ministry decisions not to proceed.

These data are consistent with the findings of the 1986 Provincial Auditor's report. In that report the auditor notes that in 1984-85 only one of 91 successful prosecutions was for repeat orders. In most cases, prosecutions were initiated only after an accident occurred. According to the auditor, "It appeared to us that similar orders were not being considered for prosecution unless an accident had occurred in the work places."

In large part, this poor record in the courts is a reflection of the fact that few lawyers are provided to give these cases proper attention. This

results in inadequate preparation of cases and their subsequent loss in the courts. Even the present minister's best efforts to toughen enforcement have been thwarted. There is a backlog of about 1,700 prosecutions currently in the court system. The earliest hearing dates available to prosecute these 1,700 cases are in the summer of 1988.

These statistics, however, do not reflect the day-to-day hindrances that inspectors experience in their task of enforcement. In our September 29, 1986, brief to the McKenzie-Laskin review, we documented a series of cases illustrating how inspectors' attempts to obtain compliance were frustrated by repeated failures of the legal services department to carry out prosecutions. We documented political interference by members of this House and obstruction from senior ministry officials.

1620

We raise these again with this committee because we firmly believe that the McKenzie-Laskin review failed to treat these issues properly. Their report did find corroborating evidence to support our allegations of misconduct in the cases presented. Despite this, they instead absolved the division of any responsibility.

The key to their outrageous conclusion is found in the criteria the inquiry used to judge the division's performance. According to the McKenzie Laskin review: "The conduct of the ministry in enforcement and prosecution must be judged on the basis that the internal responsibility system prevails and underlies the legislation. This is the basis upon which the review examined the allegations of misconduct." In other words, since the division's role is that of facilitator in a system of self-compliance, its actions or inaction were permissible and acceptable.

From this absolution flowed a series of recommendations that cannot be viewed as helpful either to inspectors or to workers in general. The review merely endorsed the continuation of the voluntary self-compliance approach without any statement concerning its present ineffectiveness.

In line with this, it recommended a meagre increase in staff to 1981 levels. It further suggested watering down routine inspections with a system of self-audits in an effort to lower the presence of inspectors at the work site. This, the authors reason, will promote the effective functioning of the IRS by encouraging the parties to work out their problems.

These conclusions and recommendations are unacceptable.

First, they are totally at odds with the empirical findings of the advisory council study, the Provincial Auditor's report for 1986, and the law reform commission report on work place pollution. Each of these independent bodies found that an active and vigorous inspectorate was vital to work place monitoring and the effective functioning of the internal responsibility system. McKenzie and Laskin were fully aware of all these findings but either ignored them or, as in the case of their use of the advisory council survey, misrepresented them.

Second, McKenzie and Laskin were fully aware of the experiences with IRS in other jurisdictions. They were aware, for example, that Sweden, which has a fully developed system of internal responsibility which is comparable in population size and industrial structure to Ontario has an inspectorate that is twice the size of Ontario's.

Finally, and more seriously, the review's absolution of the division and its weak recommendations have not encouraged positive change. Instead of moving rapidly to meet the paltry inspector staffing objectives recommended by the review, the division has a lower staffing level now than it did before the inquiry began. The McKenzie-Laskin objectives have clearly not been met. Division recruitment has not kept pace even with the vacancies, though the administration knew well in advance that these vacancies would occur.

We should note a number of encouraging actions by senior ministry officials. Improving inspectors' training by using the Ontario Workers Health Centre has been significant. The administration has also been qualitatively more co-operative in involving inspectors in policy development. We hope these are harbingers of positive change. In our view, the inspector's role is absolutely essential to prevention, but that role can only be played with a sufficient number of well-trained and properly equipped players.

By the same token, we cannot rely solely on the inspectorate and externally imposed sanctions for the effective control of health and safety in the many thousands of work places and construction sites in this province. It is clearly impossible to inspect in detail every work place in our huge modern industrial complex.

Our system of enforcement and control of work place hazards must be supplemented by an equally effective system of enforcement in each work place. We favour such a system of internal enforcement, but it can never totally replace external enforcement. One must effectively supplement the other. To achieve this, the current internal responsibility system must be dramatically revamped and provided with a new legal framework in which to operate. In our view, what really counts in preventing work place accidents and illnesses is routine and comprehensive monitoring at the work site.

The McKenzie-Laskin review justified the lax enforcement of the act on the basis that the IRS prevails and underlies the legislation. This is an appalling statement, since the concept of the IRS is not even mentioned in the legislation, and even more so since the recent advisory council survey showed that the system of IRS and joint health and safety committees is not functioning effectively. That report indicated that only a small percentage of joint health and safety committees was in full compliance with the legislation. In effect, the joint committee provision of the act was not being enforced and, for the most part, existing committees were ineffectual paper committees. In the few instances where committees function well, the survey found that the strong presence of Ministry of Labour inspectors and a strong and active trade union were key factors.

Similarly, the Ontario Law Reform Commission's paper 53 found that the major weakness in the internal responsibility concept lies in the "generally advisory and consultative role of the committees." In line with the advisory council's survey, the law reform paper notes: "Internal responsibility cannot be expected to replace a more conventional regime of externally imposed and enforced regulatory controls... or to function effectively without supports from such a system."

In effect, as long as joint committees remain advisory in nature with no external or internal controls to enforce compliance, internal responsibility is doomed to fail as a regulatory mechanism. Under this system there is little incentive for employers to comply with decisions of committees or to make serious attempts to resolve health and safety issues.

If this government and this Legislature are truly committed to the concept of internal responsibility as a regulatory mechanism, then joint committees must be given effective regulatory duties and the material resources to enforce them.

The present provision for committees in the Occupational Health and Safety Act is so ambiguous and admits so many necessary provisions that the committees have been bogged down in debates over representation, frequency of inspections and meetings, accident investigations, competing committees, the provision of the information and time off work to perform their duties. Their work is further hampered by a lack of resources and by insufficient training. For most committees, activities have been narrowly restricted to a perfunctory meeting every three months, with little or no work place monitoring between these meetings.

Finally, we must point out that many of our members who work in offices are denied even this meagre provision through which to raise their health and safety concerns. For dubious reasons, officer workers who do in fact have serious health and safety problems are denied the right to joint health and safety committees.

Our union supports the provisions of Bill 149 in that they do effectively address these issues in an effort to reinforce the IRS. In this spirit, Bill 149 provides that joint committees have the power to require the employer to remove a threat to the health or safety of workers. This may seem like a substantial shift in power, but both parties on the committees must first identify the hazard and then require a compliance. It recognizes a shared power among the parties that is not exercised unilaterally.

In the same vein, Bill 149 recognizes the special nature of the work relationship and the particular interest of workers in their work environment. Accordingly, it provides that a worker member of the joint committee may order that an unsafe operation be shut down and/or refuse dangerous work on behalf of a worker. While this provision represents a definite shift in power, we would argue that it is a necessary prerequisite for the protection of workers and the effective functioning of the IRS.

First, this power is placed with a worker member of the joint committee who will have special training and information to identify threats to workers' health or safety. Second, such power provides essential protection for workers who may, because of fear or uncertainty, be reluctant to exercise their right to protection. Third, such an option provides an incentive to both the employer and the joint committee to work towards an appropriate resolution of a health and safety problem.

1630

You will no doubt hear many objections to this provision from employers. They will argue that these powers will be used irresponsibly. They will allude to resulting chaos in production and the threats to the province's competitive position. These arguments assume that workers are irresponsible.

It is interesting that jurisdictions which currently provide safety stewards with shutdown powers--places such as Sweden, Norway and the Australian state of Victoria--are highly competitive economies. They have not experienced its irresponsible use, and they have the most co-operative internal responsibility system in the world. For example, in the first year of Victoria's legislation, worker representatives issued only 22 stop-work

orders; in 21 of those cases, the state inspectors upheld the worker representatives' orders. Our own provincial experience with the right to refuse unsafe work shows the right has not been used frivolously and has not led to production chaos. Indeed, the record shows the right has been used infrequently.

In an effort to provide for effective joint committees, this bill substantially expands their functions and provides them with the necessary resources to do the job. It goes beyond the narrow mandate found in the current legislation, which provides perfunctory powers at best.

Joint committees are given the wherewithal to work between meetings. An effective IRS must provide the shared power to monitor the work place, to obtain information, to receive and to provide training, with the necessary clerical support to maintain the committee's effectiveness. Under the proposed legislation, worker committees would be able to carry out all those functions that are a vital part of IRS.

There are other provisions in Bill 149 that in our view would furnish the necessary ingredients to an effective IRS. Inspection and investigative functions are absolutely essential to prevention. Under the current legislation, however, these activities are so narrowed as to make them nonexistent. How can worker inspectors carry out investigations when they are not able to ask questions and require answers? How can this activity have the objective of prevention when it is limited only to investigating critical injuries or fatal accidents? Is not the investigation of dangerous situations or nonfatal or noncritical injuries just as vital to the task of prevention?

Inspection activities cannot achieve their objective if they are conducted infrequently. The nature of modern production, its complexity and constantly changing nature, makes inspections imperative at least once a month.

Finally, the IRS and the joint health and safety committees cannot function properly or effectively without information and comprehensive health and safety training for their members. Committee members cannot make informed decisions and respond appropriately if they are provided only limited information and have little skill in occupational health and safety. In particular, worker committee members who are responsible for inspecting, investigating and halting unsafe operations must have complete information and must be trained to assess work place conditions and make knowledgeable and considered decisions.

A true IRS must make responsibility a reality. This can only be achieved when shared responsibility is accompanied by equal access to information and training and effective power to make reasoned decisions. Under the current legislation, many of our members are either totally denied the right to refuse unsafe work or have severe limitations placed on their use of this basic right of self-defence.

OPSEU represents over 3,000 workers who work in the province's correctional facilities. These include correctional officers, supervisors of juveniles and support staff who work with them. These workers face serious hazards and should have the same right of self-defence as other workers in the province. These workers have no recourse in the face of serious threats to their health and safety. Because they lack this right and because joint committees are ineffective, management has little incentive to address their concerns.

This deficiency in the legislation has given management a convenient cover to discipline and penalize workers who raise health and safety concerns or who seek compliance with other provisions of the act. In effect, management has been given unilateral control over every health-related aspect of work.

Health care workers, while not denied the right to refuse, are restricted from exercising the right where the health or safety of others is placed in imminent jeopardy. This broad restriction has left workers uncertain about when they can refuse unsafe work and liable to arbitrary reprisal when they do so. In an effort to deny workers this right, employers have invoked the imminent jeopardy restrictions without any grounds for doing so. In some instances, the Ministry of Labour has abetted employers in this questionable practice.

Such a situation occurred at the North Bay Psychiatric Hospital. On that occasion workers refused to escort a patient with a highly infectious disease without proper information and precautions. The employer contended that such a refusal would place persons in imminent jeopardy and ruled that the workers could not refuse. The manager of the local Ministry of Labour inspectorate office did not investigate the circumstances, yet backed the employer in warning all workers that any refusal would be treated as insubordination and result in disciplinary action.

A union complaint about these threats resulted in an investigation. The Ministry of Labour's occupational health branch concluded the employer's invocation of imminent jeopardy was groundless. The real question in all this is whether the denial or restriction of this right is in any way justifiable.

These prohibitions were based on fears concerning what might be considered a disruption of an essential service in the health care sector and a possible threat to the public safety in the case of correctional workers. It is truly ironic that restrictions are placed on workers who are seen to provide essential services. These workers are given tremendous responsibility to care for people, yet the restrictions assume that they will behave irresponsibly if given the right to self-protection--a truly absurd proposition.

This fear is not borne out by experience. Those jurisdictions that have an unrestricted right to refuse in both these services have not reported any instance that has resulted in either an injurious disruption of essential services or a threat to public safety. In fact, we might argue that unaddressed hazards in these services are more likely to result in some form of injury to the public than is the responsible exercise of the right to refuse by workers.

Further, refusals in the health care sector in Ontario have never resulted in harm to clients. The right to refuse imposes an orderly procedure that demands prompt investigation and resolution of the concern and, where this is not possible, a timely response from the inspectorate.

We should point out that delay and complication are more likely to occur where loose and broad restrictions are available to the employer. Instead of investigating a worker's concern promptly, employers are more easily lured into exercising their unilateral prerogative to manage the work place.

The internal responsibility system must be seen as encompassing three basic interdependent provisions: the right to participate, the right to know and the right to refuse. The prevention and resolution of work place health and safety problems depends on all three.

You cannot give workers the right to participate in the day-to-day detection, evaluation and reduction of work place hazards without giving them also the training and knowledge needed to recognize the hazards. Nor can you give workers the right to participate and know about hazards without also giving them the right to refuse work that has been evaluated as unsafe. All these rights must be seen as an interdependent system.

It is our view that Bill 149 makes a reasonable contribution to improving our safety legislation, and we support it. This proposed legislation, as well as that proposed by the Minister of Labour, deserves a full and detailed discussion to ensure a reasoned approach to the development of laws to protect the health and safety of workers.

On behalf of our membership, we thank the committee for hearing us today and look forward to working with you as you continue your deliberations.

Mr. Chairman: Thank you, Mr. Clancy. There are some rather startling statistics in your brief. A number of members have indicated they might engage in a dialogue with you.

Mr. Martel: I have a couple of questions. You make reference to the document presented to McKenzie-Laskin. I wonder if you are prepared to share that document with us so that we can see what in fact you said to those birds, McKenzie and Laskin.

Mr. Clancy: Our legal counsel has repeatedly advised us that the most appropriate way for that brief to be obtained is from McKenzie and Laskin themselves. I am not sure if the committee has subpoena powers, but I would respectfully suggest--indeed, request--that the committee subpoena that document.

The reason I say this is that our inspectors were very forthright when they prepared that brief. We are not interested in seeing them dragged through the courts year after year, trying to defend the statements and the points that they brought forward in that brief.

1640

Mr. Martel: Okay, my colleague will draft an amendment to the effect that we are going to subpoena the document from Mr. McKenzie. He will ask him first, and if he does not want to give it to us willingly, then we will subpoena the document.

I think it is imperative that we see that document, that the committee see that document. At the same time, you people have to be protected against the possibility of any lawsuit.

I want to ask you a couple of other questions.

Mr. Chairman: Before you do that. do you want to respond to that, Mr. DeMatteo?

Mr. DeMatteo: Yes, I just want to make one additional point. Mr. Martel, I think it would be advantageous for this committee to obtain all the information that McKenzie and Laskin were given by the Ministry of Labour, health and safety division. I think you might find that useful. In addition to the material that we provided, there are certainly a lot of other things, internal documents that supported many of our allegations, which were unavailable to us because of the internal nature of the--

Mr. Martel: What you are saying to me, then, is that, in addition to the brief you prepared, you supplied the documentation with which to support your allegations?

Mr. DeMatteo: We provided the McKenzie and Laskin people with all the files to support the allegations made in our brief. As well, McKenzie and Laskin did unearth further information that we did not have, as a matter of fact, from the internal documents in the ministry's division's files. It would be worth while not only to get our documents but to get the additional documents that McKenzie and Laskin did receive from the division.

Mr. Martel: To your knowledge, did McKenzie and Laskin question anybody, or did they even question all of the people whom you named in your brief or in the documentation that was presented? Did they interview those people?

Mr. DeMatteo: Not all. They certainly interviewed some of the people whom we suggested they talk with. However, we got reports from people who were waiting to be called from the review who were never brought in to discuss the allegations or any of the information.

Mr. Martel: Sounds like a great inquiry.

I have only two other questions I want to ask. The Minister of Labour has indicated in the House that he in fact has 200 new staff who are working in occupational health now--

Mr. DeMatteo: That is absolutely--

Mr. Martel: --who were not working there a year ago.

Mr. DeMatteo: That is not true, from the staffing statistics we have seen. If the minister means that they may have increased other staff in addition to inspectors, then maybe that is the case; I cannot be sure. But I can tell you what the staffing statistics are right now for inspectors.

I believe that amounts to 204 inspectors, fewer than there were when the McKenzie-Laskin people initiated their investigation in the spring. At that point there were 207 inspectors, so there are fewer now than there were in the spring.

The minister may be referring to--they do propose to increase the positions to the level McKenzie and Laskin recommended, which is 240 inspectors. That is the 1981 level. However, they have not filled that objective yet, and we have even fewer people than we had before because so many vacancies have occurred.

Mr. Martel: That might account for why, when I put the question on the Orders and Notices, the minister said they could not provide that information to me. I got the answer this week that it would take too long to compile that. He can tell me he has 200 new staff, but he cannot provide me with the names; it would take too long to compile it.

Mr. DeMatteo: Some of the information--they may have increased some--there are a lot of people in the ministry and the support branches, for example, in clerical services, who were on contract; they were contract employees. In some instances they have made these people classified employees rather than unclassified employees. So if the minister is referring to

anything, he might be talking about the increase in support staff or making unclassified people classified. It is kind of a shell game as far as we are concerned.

Mr. Martel: I am only going to ask you one other question. Can amending the legislation, as the minister proposes, which really is to change nothing, in my opinion--that is a biased opinion; I state that position. I do not back down from it--his proposed legislation still allows all of the power, as I understand the legislation, to remain with management, totally and absolutely.

In other words, your role still continues to be advisory, under his proposed amendments. Will that ever protect the workers of this province?

Mr. DeMatteo: I do not believe so. I think, as we have stated in the brief, as President Clancy stated, that cannot happen unless you alter that balance. You have to give effective power to the workers and have shared powers and shared responsibilities, otherwise it will not work.

That has been the experience in every other jurisdiction that has experimented with these types of provisions.

Mr. Chairman: Thank you. Mr. Wildman, you are next on the list.

Mr. Wildman: Mr. Chairman, I would like you to give me some direction. I have prepared a motion along the lines of my colleagues' questioning and I would like to put it, but I also have a couple of short questions I would like to put to the witness.

Mr. Chairman: We will first address the question of the information that you want the committee to obtain.

Mr. Wildman: Okay.

Mr. Chairman: The committee cannot itself--

Mr. Wildman: Yes, I have dealt with that in the motion.

Mr. Chairman: Okay. We would determine as a committee that we want to ask the House, through the Speaker--in other words, a Speaker's warrant rather than a subpoena--to get us the information we require. We would first ask whomever it was we wanted the information from to provide it to us. If they refused, we would ask them a second time. If they refused a second time, the committee could then go through the Speaker to obtain a Speaker's warrant to get the information we want. That would be determined by the assembly, not by the committee.

Mr. Wildman moves that the committee contact Messrs. McKenzie and Laskin to request the material and all documents provided to them by the Ministry of Labour and the brief and all documents presented to them by the Ontario Public Service Employees Union during their inquiry and that the committee consider requesting the Speaker to issue a warrant for the production of any or all of such material and documents if they are not voluntarily provided to the committee.

It is in order, but I am uneasy about making the two together.

Ms. Hart: Mr. Chairman, I have the same concern. We have no

difficulty supporting the request, but not when the second part is tacked on to it, because what that does is, it says to Mr. Laskin, who is certainly reputable counsel, that we doubt he is going to give it to us. That is just not fair.

Mr. Wildman: Mr. Chairman, if I may answer that, I understand the position being put by Ms. Hart. However, I must say that was my intention. I want it understood that as a committee we do have the right--and that is all I am saying in the motion--to request the Speaker to issue a warrant.

If it is the wish of the committee that the two parts of the motion be split and put separately, I would be prepared to do that.

Mr. Chairman: It is in order the way it is, so it is not a question of being out of order. It is what the committee determines--

Mr. Wildman: Whatever the committee wishes.

Mr. Chairman: Yes.

Ms. Hart: I am in your hands, because I am not exactly sure how this works, but we would like it to be split. Maybe what I should do is propose an amendment that retains the first part of your motion and drops the second.

Mr. Chairman: Okay. Why do not the two of you work out something that is acceptable and we can deal with it this afternoon?

1650

Mr. Martel: What worries me is the time factor. I understand Ms. Hart's concern, but we have to make a request of McKenzie and Laskin and we have maybe two days left. If McKenzie and Laskin say no, then in fact we are forced to wait until September or some other time when we might reconvene to get those documents. I think we should indicate what we want and do it in a normal fashion.

The Speaker has to know now in order to activate it some time during the summer. We are not going to reconvene. This committee is not sitting during the summer, so it would be essential that if we do not get the documents, the Speaker can then act. Otherwise, we would leave it until some time in September, before we get back, to request it from the Speaker. We could sit for months and months waiting for documents.

Mr. Chairman: If that is the determination of the committee, may I suggest that you put in your motion that the material be provided by a certain date? In other words, we will not be sitting anyway, so if you put in there the end of July, as a suggestion, after that, you could then take the next step. We are not going to get the Speaker's warrants before we adjourn anyway, because there will not be an opportunity for him to provide the information.

Mr. Martel: No.

Mr. Wildman: I would be prepared to add that the material and all documents be provided by the end of July.

Mr. Chairman: Let us dispose of this, because we have a time factor for Mr. Clancy, we have another group to appear and there are votes at a quarter to six. I do not want to take up the time of the committee with

debating this. I would rather you sit down with anyone else you wish to work it out and then put the finished motion to the committee rather than write it in public here, as we are doing now.

Mr. Wildman: I would be prepared to stand down my motion and to discuss with Ms. Hart how she would prefer it to be worded.

Mr. Chairman: Okay, let us do that. Are there any other questions of Mr. Clancy and the Ontario Public Service Employees Union?

Mr. Wildman: I would like to ask just a short question in regard to page 4 of your brief, where you refer to the Ontario health insurance plan centres, particularly the Hamilton OHIP operation. Gentlemen, you will recall that this issue was raised publicly with the previous government by myself. Basically, you say nothing has changed. Can you comment on whether the approach of the Ministry of Labour, and in this case the Ministry of Health--the government in general--has changed, or does it remain very similar now, after the change of government, to what it was prior to the change of government?

Mr. DeMatteo: Particularly in dealing with office work places, we really found very little change. Frankly, they are not considered priorities. I believe there is a prejudice that somehow office work is safe, sedentary and does not involve any risk. There are problems. We are not dealing with an industrial plant; none the less, the kinds of contaminants we would find in those environments, while not exceeding threshold limit values or standards, are certainly present in a complex way.

Because they have lowered the number of air changes in the environment to conserve on energy, both air-conditioning and heating, you find that inspectors going in there have a difficult time trying to get the Occupational Health and Safety Act enforced, because there has been no gross violation of it. None the less, you still have all these problems that just fester.

What makes it worse is the fact that these people do not even have joint health and safety committees where they can discuss these things, so they cannot have even that small margin of help.

Mr. Wildman: This relates basically to what you characterize as the approach, which is essentially not to deal with issues, unless they can relate to an accident, a serious accident?

Mr. DeMatteo: That is right.

Mr. Wildman: And since questions of air and health, the environment, do not relate to a specific incident, it is very difficult to get them involved?

Mr. DeMatteo: A classic example of this, along with the situation in OHIP offices, is what happened at the London courthouse this past summer. In that case, workers were not told, contractors were not told, that there was asbestos in the structural beams in the building. They went in, disturbed the asbestos and perhaps contaminated the whole building with asbestos. It has taken something like eight months for the Ministry of Labour to press charges against those people who were responsible for that contamination. We have just found out that the defence for those people being charged has argued that the ministry has gone beyond the statute of limitations for public authorities, which is six months, so those charges will probably get thrown out of court.

Mr. Martel: That is not the first time then?

Mr. DeMatteo: That is not the first time.

Mr. Martel: You have another member who was recently drowned?

Mr. DeMatteo: That is right, yes, Alan Brown, who was drowned a little over a year ago. In that case again, charges were laid against three Ministry of Transportation and Communications officials. That went to court and the court discussed the charges because the ministry had gone beyond the statute of limitations of six months. Again, it took them over eight months to press charges in that case.

Mr. Martel: Funny how quickly they laid charges, inside of three weeks, against one single miner for doing what he was supposed to do, is it not?

Mr. Wildman: That was the police.

Mr. Martel: I know it was the police. They just did not listen to the Minister of Labour.

Mr. Mackenzie: We occasionally get thrown at us the danger of this right to refuse. How many of your inspections do you conduct because of a refusal or a work stoppage?

Mr. DeMatteo: The ministry stats indicate that in 1983, for example, there were 140 work refusals which were investigated by the ministry. In 1985-86, there were 344. That is not a lot.

Mr. Mackenzie: This is out of how many? What is the total figure?

Mr. DeMatteo: Out of over 50,000, well over 50,000 work place visits. Oh sorry, it would be about 40,000 work place visits.

Mr. Pierce: I have one short question, Mr. Clancy. On page 20 of your submission, "The Right to Refuse Unsafe Work." Can you tell me how many collective agreements you have that do not have the right to refuse unsafe work conditions in them? Is there no clause in your agreements that gives the worker the protection of refusing to work in unsafe conditions?

Mr. Clancy: No. The act supersedes--

Mr. Pierce: I realize that, but at the same time as the act supersedes a collective agreement, there is nothing wrong with having clauses in a collective agreement that give the worker some protection, some authorization to refuse to work under certain conditions.

Mr. Clancy: It does not have any force in law, though. With due respect, it does not have any force in law.

Mr. DeMatteo: The other problem too is that in many ways we would like to keep elements of occupational health and safety as non-negotiable items. Something as vital as health and safety should not be something which you haggle over and trade off.

Mr. Pierce: Or that you give up some money for.

Mr. DeMatteo: Yes, we think that is a pretty vital thing and we

think there should be a high standard set in legislation to protect people as a first, ground-floor level.

Mr. Chairman: Can I ask you one question, Mr. Clancy? On page 6, you talk about the inquiry finding "incidents of unfortunate delays...missed court dates, political interference." What do you mean by that?

Mr. Clancy: I will let Bob speak to you, but we found instances where members had tried to influence senior ministry officials in regard to whether prosecutions went ahead or not.

Mr. DeMatteo: Yes, this is a well-documented case. It involved D. J. Whitlock Construction and it involved a member of this House, the honourable Mr. Henderson, who on behalf of the constructor in this case, who was going to be charged by the Ministry of Labour, interceded on that individual's behalf and caused an investigation to occur on the part of the Ministry of Labour into the actions of the inspector. After the investigation, this inspector was exonerated of any misconduct or misbehaviour, and then charges were proceeded with. It was supposed to go to court. Just before this case was to be heard at trial, the charges were mysteriously dropped.

1700

If you look at the McKenzie-Laskin document, volume 2, you will find Mr. Laskin basically says that, had it not been for the intervention of Mr. Henderson, that case would have gone to trial. However, he said it was beyond his mandate to comment on the appropriateness of a member of the House interfering with prosecutions. He provided more documentation than we even had at the time to prove the allegation that there was actual political intervention in this particular case on behalf of this constructor.

That is just one case. What was really striking about the way in which Laskin dealt with it is that he found more corroborating evidence than we did to support that. By the same token, he said there was interference but he could not say there was misconduct. We find that very hard to swallow.

If you take a look at volume 2, it has all the documentation there.

Mr. Pollock: On page 4, the Hamilton OHIP operation, was that building relatively new? Why was it not built to pretty good standards in the first place?

Mr. DeMatteo: I think that is a very good question. You are quite right; that is pretty much a new building. It is a space-age building. The problem is it is hermetically sealed, and in order to conserve on energy, what they do basically is cut down the amount of fresh air coming into the building. What you have is a recirculation of all the contaminants, whether that be cigarette smoke or off-gassing from plywood and particle board or various equipment used that generates contaminants. These are all trapped and recirculated in the environment.

There is something wrong. Not only do they have that problem, but there is also something basically wrong with the building design and the ventilation system itself.

Mr. Chairman: I understand you are in a rush. Mr. Usher, Mr. Clancy, and Mr. DeMatteo, thank you very much for coming. Mr. Rothney is an old friend from Sudbury; it is good to see you again, Keith. Thank you very much.

The next presentation is from the Ontario Federation of Labour. I am not sure who the head honcho is here today. Is it you, Mr. O'Flynn?

Mr. O'Flynn: It is indeed, brother.

Mr. Chairman: Would you introduce your colleagues and proceed, please. Welcome to the committee.

ONTARIO FEDERATION OF LABOUR

Mr. O'Flynn: I am Sean O'Flynn, secretary-treasurer of the Ontario Federation of Labour. The president is chairing his board today, so he asked me to come down and make his presentation.

On my far left we have Kim Perrotta, who is an industrial hygienist with the United Electrical, Radio and Machine Workers of Canada. Next we have Jim Turk, who is a member of the OFL occupational health and safety standing committee and was also with the UE. Jim is educational director with the OFL as of this week. Next to me we have Faith Jackson who is a staff representative with the Service Employees' International Union and another member of the OFL occupational health standing committee.

On my extreme right, we have someone who is no stranger to you, Bob DeMatteo from the Ontario Public Service Employees Union, who has responsibility there for health and safety and who is also a member of the OFL occupational health and safety standing committee. Next to me on my right, we have Ms. Linda Jolley who is the director of occupational health and safety at the Ontario Federation of Labour.

Mr. Chairman: And has a wide reputation in the province.

Mr. O'Flynn: Absolutely. We have a full cast here. I will read the brief to you.

As representatives of the Ontario Federation of Labour, we wish to thank the standing committee on resources development for this opportunity to address Elie Martel's private member's Bill 149, An Act to amend the Occupational Health and Safety Act. But we must express to you our profound disappointment in the time allotted to this crucial issue. At this point, working people in Ontario are assured of only three hours to present our concerns and recommendations about the working conditions we face on the job, working conditions that took 220 lives last year, one worker almost every single working day.

Last year alone, 442,000 workers were injured on the job, 203,241 were injured seriously enough to lose time from work, and 14,832 workers were awarded pensions for permanent disabilities. In fact, a federal study has estimated that one worker is actually disabled on the job every 12.7 seconds of every working day.

The toll from occupational diseases is simply unknown, but if the recent estimate, from the Yassi report on "Occupational Disease and Workers' Compensation in Ontario," that as many as 6,000 Ontario workers may die each year of occupational diseases like cancer and respiratory disease is even close to being accurate, we have a major and growing epidemic in our work place, an epidemic that is simply not reflected in the statistics produced by our Workers' Compensation Board. Even Paul Weiler, using a very conservative estimate of the numbers of occupational cancer deaths in this province, stated

that only one in 17 deserving occupational cancer victims is presently recognized by our Board. So their statistics do not, in any meaningful way, reflect the grisly realities in occupational health and safety in our work places.

As the representatives of over 800,000 working men and women in this province, the Ontario Federation of Labour has a direct and substantial interest in the matter before this committee.

The need for public hearings: It has been almost ten years since the Occupation Health and Safety Act passed through this Legislature, and the promises made by that government, whose slogan was "Keep the Promise," have rung hollow. Even the minister's own advisory council has stated--I am a member of that advisory council by the way--"The promise of improvement in the future wellbeing of workers implied in the royal commission report has, for the most part, gone unfulfilled." The advisory council recommended, "that the Minister of Labour take the steps necessary to provide a public forum for all interested parties to debate the premises underlying the act and its enforcement and to consider alternative structures."

Despite such advice, the Minister of Labour proceeded once more to consult behind closed doors about his proposed amendments to the act. Well, that simply is not good enough.

It is time we had a full and public airing about what it is that all of us expect from an Occupational Health and Safety Act, and six hours set aside for both employers and labour is not sufficient. We encourage this committee to extend the time allotted for this bill, since the minister has failed to bring his own bill forward, and conduct hearings in other centres across this province so that working people everywhere can express to you their desire to be able to go to work and return without risk to life and limb.

The purpose of the act: What struck some of us when the Occupational Health and Safety Act was passed as Bill 70 in 1978 was the absence of a statement of purpose on the inside cover of the bill. Most Ontario bills have a short statement of intent, but the inside cover of Bill 70 was blank. One could be cynical and conclude that the bill had no purpose, and certainly the conclusions of the advisory council might support that contention.

However, we believe it is important to state a purpose for such legislation and we would endorse what even the present Minister of Labour (Mr. Wrye) has stated in recent speeches, that workers have "a basic human right to healthy and safe work places." To that end we would recommend that the purpose of any occupational health and safety legislation must be for the protection and the promotion of occupational health in the work place.

1710

Occupational health must be defined as it is by a joint committee of the International Labour Organization and the World Health Organization:

1. The promotion and maintenance of the highest degree of physical, mental and social wellbeing of workers;

2. The prevention among workers of ill health caused by their working conditions;

3. The protection of workers in their employment from factors adverse to their health;

4. The placing and maintenance of workers in occupational environments which are adapted to their individual physiological and psychological conditions.

Philosophy behind the act: The report of the Royal Commission on the Health and Safety of Workers in Mines laid the foundation for our present legislation. James Ham worked out a fairly elaborate system of what he called internal responsibility at the company level, which in turn was supposed to lead to self-regulation or self-compliance. However, he also laid out an important role for the enforcement agency, namely, "standard setting" and "primary responsibility for auditing, monitoring and evaluating the operations. This it would do by inspecting operations to determine the state of compliance with the existing framework of regulations and by monitoring the introduction of technological change so that regulations can be altered as required to adapt to such changes.

But in 1978, when this Legislature passed the Occupational Health and Safety Act, there was absolutely no mention of internal responsibility in the act. There were promises of workers' rights and there was a very clear role in enforcement laid out in sections 28 and 29, which led us to believe that the Ministry of Labour, indeed, was supposed to play an important role in ensuring compliance in our work places.

But then it gradually unfolded, as more and more information leaked out of the ministry, including sections from its operations manual, that it had no intention of enforcing the law. They saw their role as a facilitator in the internal responsibility system. Without enforcement, or even the threat of enforcement, internal responsibility has come to mean the protection of management rights over the protection of workers' health and safety.

This philosophy could not have been made any clearer than on January 12, 1987, when the McKenzie-Laskin report actually accused our health and safety representatives of being somehow insincere and motivated by "other agendas" because they even dared to expect that the Ministry of Labour might enforce the Occupational Health and Safety Act in the same manner as the Highway Traffic Act or the Criminal Code. They deliberately attempted to divide the labour leadership from these so-called radicals who merely suggested the law be enforced. Well, it was clear in the Ontario Federation of Labour's press conference of February 4, 1987, and it is clear here today, that labour is united in its fight for cleaner and safer work places and strong enforcement of the law.

We do not believe that the people of Ontario, or you as legislators, accept one law for the highways and streets of Ontario and another in our work places. People in Ontario are expected to obey the laws that you set and when they do not, we expect the enforcement agency to deal with the violators. In that way, all laws in Ontario involve internal responsibility or self-compliance. We are expected not to drink and drive and we are expected not to assault our fellow human beings. However, when we do not regulate our behaviour, our society expects enforcement agents to deal swiftly and harshly with such violations.

In occupational health and safety, we expect no more, and as workers, we expect no less. We do not believe that as legislators, you passed a law, on

any understanding, that it was all right to flout that law as long as you keep consulting with your workers. Compliance with the law is simply not negotiable.

Internal responsibility system: But let us look more closely at the internal responsibility system, as it is so-called. Because it is not in the act and there has been no effort to clarify its meaning or to reach a consensus among the work place parties. The internal responsibility system or its unfortunate acronym, IRS, is probably the most misunderstood concept in the history of public policy.

At the Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario, Ontario Hydro explained its understanding of the IRS, "that responsibility in health and safety is doing that which is required in health and safety from a social and human standpoint voluntarily." They went on to point out that the prime responsibility rests with management, with input into policy from workers, but no mention of any role for the Ministry of Labour.

Labour, on the other hand, believes that while it has certain crucial rights, the primary responsibility remains with management, as both Hydro and Ham had stated, but there is still a strong enforcement role for the ministry.

The Ministry of Labour describes internal responsibility as a co-operative sharing of responsibility between management and labour, where the level of compliance will move from enforced compliance, through self-compliance, to ethical compliance with the Ministry of Labour inspectors facilitating this love-in in the work place.

It is clear from these interpretations that industry, labour and the ministry do not share a common understanding of what is expected in occupational health and safety, and has led the advisory council to conclude, "It is council's view that the polarization evident today between government, labour and management is, in no small measure, due to the failure of the Ministry of Labour to build a general consensus in support of its present policies and programs."

Ms. Jackson: Labour in Ontario does support the concept of internal responsibility. Indeed, the labour movement in Ontario had been systematically bargaining joint health and safety committees, worker health and safety representatives and additional means of worker participation for decades. By 1978, when the act was passed incorporating mandatory joint committees in certain work places, already 48 per cent of unionized work places, and more than 50 per cent of the larger unionized work places, already had such committees, according to the advisory council's survey of joint committees in Ontario. We saw our right to participate in all matters of health and safety in the work place as a right in natural justice, just like our right to know and our right to refuse unsafe work.

We understand that even when we state that there must be more and better trained inspectors, at least more health and safety inspectors than game wardens or conservation officers, there can never be enough inspectors to cover every work place at every minute of every working day and that workers and management must be able to act in the work place to ensure health and safety. However, and we wish to emphasize this point, the internal responsibility system is not a replacement for strong ministry enforcement.

But as it is constructed now, the internal responsibility system is simply not working. Even the Minister of Labour in a speech to the Personnel

Association of Ontario, admitted that the present act does not give committees the kind of clout they need to play their full part in worker health and safety.

The advisory council told the minister: "Although there may be some room for debate about the conclusions to be drawn from the data, it is clear from the survey that the committee system, as established under the act, is not adequate. Furthermore, there is no consensus that the internal responsibility system is functioning effectively or that, alone, it can be realistically expected to act as an instrument for change."

We believe the Occupational Health and Safety Act must be amended, and that Elie Martel's Bill 149 is a good step forward in providing workers with some of the tools they need to participate as equals in all matters of health and safety in the work place.

Coverage: Since the purpose of the Occupational Health and Safety Act should be to ensure the highest degree of wellbeing for workers, it is essential that all workers in Ontario be covered by this act if they fall under provincial jurisdiction.

It is clear that farm workers are at very significant risk from equipment hazards and from chemical applications in farming. A recent Canadian centre publication on farming and cancer indicates that while the overall rate of cancer, especially lung cancer, is lower in farmers, there is strong evidence to indicate that dairy and poultry farmers have a higher incidence of leukemia and stomach cancer. Some farm chemical exposures have been linked to lymphomas and, of course, skin and lip cancer among farmers working in the direct sunlight is higher. Farm workers in the US have shown higher cancer rates, but also some very severe reproductive problems, including birth defects and sterility.

1720

We would go even further and recommend that domestic workers in homes also be covered, since they are perhaps one of the most oppressed groups of workers in terms of conditions and wages. The home, as the National Safety Council is continually stating, is hardly a haven of safety. Even our Workers' Compensation Board covers domestic workers now and they should be offered equal protection from this act.

Ms. Jolley: Joint health and safety committees: The joint health and safety committee is the mechanism to ensure worker participation in all matters of health and safety in the work place. Individual workers have rights and obligations to participate by reporting hazards, but any programs in prevention flow from the joint health and safety committee. In the present act, hundreds of thousands of workers in small businesses and in the service sector, which is the fastest growing sector in Ontario, are excluded from this right to participate. How can the government rely on a so-called internal responsibility system where there are no provisions for such workers to participate?

In the survey of joint committees there was fairly high compliance with the requirement to establish joint committees in work places of 20 or more, but there was still seven per cent of employers who had failed to establish a joint committee, the basis for internal responsibility. That is more than 200 out of the 3,000 work places surveyed without committees, and workers in the public sector are all too familiar with the attempts by the school boards, the

hospitals and the municipalities to deny them this right to participate. In work places with less than 20 employees, but with designated substances present, and therefore required to have a joint committee, 34 per cent had no such committees. These are work places with dangerous substances present and yet no provision for the so-called internal responsibility system.

How can the government talk about sharing responsibility when so many workers in this province have no mechanism for participation? How can the government talk about sharing responsibility when in 35 per cent of the joint committees, management had selected the worker members of the joint committee in direct violation of the act? How can the government talk about sharing responsibility when 50 per cent of the workers surveyed reported that the information they received was only adequate or less?

Twenty per cent of the worker members on committees had received no information about toxic or designated substances; 25 per cent of worker members had not received copies of material safety data sheets or even company accident or illness statistics; 30 per cent of the worker members had never received information about new chemicals, machines or equipment coming into the work place; more than 40 per cent of the worker members had never received trade secret information, trade secrets which the National Institute of Occupational Safety and Health study in the United States indicated covered regulated cancer-causing agents, and workers simply did not know.

The author of the survey reported that this lack of information was especially troublesome, given that it was the major determinant of the success of joint committees in this survey. He also found that the lack of worker skill and knowledge greatly inhibits workers' ability to participate in joint problem solving, so how can the government talk about sharing responsibility when workers and management simply are not equal partners in information available in the work place?

How can the government talk about sharing responsibility when in 61 per cent of the joint committees there is a single chairperson, and in 73 per cent of those cases, it is a member of management? The report goes on to state "that the chairperson has a number of procedural prerogatives and usually from management is a significant feature of Ontario joint health and safety committees."

How can the government talk about internal responsibility when almost 17 per cent of the committees do not even meet every three months, as required by law, and less than half of the committees do monthly inspections and 10 per cent of the committees do no inspections at all?

How can the government talk about sharing responsibility, and internal responsibility systems, when 20 per cent of management and 40 per cent of the worker members have had absolutely no training at all in health and safety and the majority of those who have had any training had a one- or two-day seminar only?

The act and the regulations provide requirements for joint committee members to monitor the work place, investigate accidents and carry out assessments and control programs for designated substances, but there are no requirements that they have any training to do so. No wonder between 30 and 40 per cent of the work places with designated substances had not carried out an assessment or implemented a control program, required by law in this province.

What is even more disturbing in the survey is that in 300 work places

where the ministry knew there were designated substances, neither management nor workers knew they were there. Where is the internal responsibility in those cases? In 1,500 work places, both management and labour knew there were designated substances but the ministry was unaware. That certainly bodes ill for the enforcement of our designated substance regulations.

How can the government talk about internal responsibility when 20 to 26 per cent of the joint committees make no recommendations at all? And how can you talk about sharing responsibility when 10 per cent of the committees' recommendations were rejected by management out of hand with no reasons given?

Indeed, how can the government talk about sharing responsibility when the role of workers is constrained and limited to making recommendations only and the veto power remains with management?

The minister's solution is to require management to reply in writing within a certain time period to any recommendations, but that merely gives workers a "no" on paper.

Sharing responsibility implies a concept of authority, and at this point in time, and even with the minister's proposed tinkering with additional worker rights, workers in Ontario have no authority to participate in decision-making in health and safety in their work place.

The survey found that workers in fact suffered from a lack of resources that could ensure any kind of equal participation in matters of health and safety and concluded:

"Another important concern is the issue of workers' ability to influence health and safety matters and the responsibility which should be attendant to increased worker influence. A number of our findings suggests that Ham's conclusions of 1976 still apply: that workers lack the power to play a full role in the 'internal responsibility system.'"

A significant minority of committees were found to be functioning only adequately, 30 per cent; or poorly or not at all, 12 per cent.

Perhaps one of the most disturbing features identified by the survey was that many joint committees function independently in the work place and have absolutely no connection with either the workers or the management there.

A very important finding in the survey was that joint committees appear to be functioning more, but with less success, in more dangerous work places. This finding echoed a conclusion of Ham in 1976, that very dangerous work places with toxic substances may exceed the capacity or other resources of a joint committee. This was also supported by the Ontario Law Reform Commission report released earlier this year, entitled 'Workplace Pollution, and by the Economic Council of Canada's study on work place regulation as part of its study on deregulation. What all of these studies concluded was that in very dangerous work places with toxic chemicals and hazardous physical agents, you cannot rely on an internal responsibility system, you need strong regulations and tough enforcement.

Perhaps the most disturbing finding in this survey was an indictment of the Ministry of Labour's reliance on the internal responsibility system to ensure self-compliance. In 78 per cent of the work places surveyed, there were violations of the act or its regulations in one form or another; 78 per cent

of the work places in Ontario were violating the law. That is what labour knows about the reliance on internal responsibility and self-compliance.

Indeed, the survey concluded:

"Joint health and safety committees by themselves, without accompaniment by the fundamental workings of internal responsibility--meaningful responsibilities, protected rights, concern and communications and effective representation--will not enhance internal responsibility. Unless fully developed through careful legislation and implementation, through training and education, and unless fully integrated with the work place, the joint health and safety committee leads not to self-regulation, but rather self-deception."

And so we say to you on this standing committee, we need the powers of the committee that are laid out in Bill 149.

1730

Mr. DeMatteo: Equal participation, equal authority: The Ontario Federation of Labour's policy has always maintained there should be equal numbers of workers and management on the joint health and safety committees. We do not believe committees are going to work any more effectively if we give workers a majority, if at the same time, workers are not given an actual authority to make decisions about health and safety in the work places.

We understand the member for Sudbury East (Mr. Martel) has already made a commitment to remove this contentious amendment. So this committee must not get hung up on employers' complaints about unequal representation.

The labour movement accepts equal participation, but we emphasize the word equal, and that means equal resources, including work time to prepare for committee meetings, to carry out research, etc., office space, equipment and secretarial services, the right to conduct environmental tests in the work place or hire a consultant to do so and the right to approve all new machinery, equipment or materials to ensure lower noise levels, less vibration and strain and fewer illnesses in the work places, all rights that management members already have.

We need to inspect the work place at least once a month or even more often in large or dangerous work places, and we need to be able to investigate all accidents and incidents that would assist in identifying hazards in the work place.

Bill 79, the right-to-know bill, will go a long way to ensure more equal access to information in the work place, but we need training in health and safety, not on our own time or financed by the union, as it is now. We need one week of training every year for our joint committee members so they can participate in meaningful training, like the 30-hour courses provided by the Ontario Workers Health Centre, and not in one- or two-day sessions, like the fork-lift truck rodeos sponsored by the Industrial Accident Prevention Association.

These requirements will do much to ensure equality of participation, but equality must be guaranteed in the right to influence decision-making about all matters of health and safety in the work place. As worker members on the joint health and safety committees, supposedly sharing responsibility, we must

have the authority to shut down unsafe operations or to refuse work on behalf of our members.

The right to refuse is given only to individual workers at the present time and in the minister's amendments, and individual workers experience intimidation and isolation despite the act, which means the right is largely restricted to workers with active and supportive unions.

We need our members on the joint committees to have the authority to act to shut down and refuse to work on our behalf, in order that both employers and the ministry, if necessary, address our very real concerns in a serious manner and remove or reduce the hazards we identify to our satisfaction. We recognize this is a serious right, and we do not intend to use it frivolously.

There has been little indication the individual right to refuse has been abused in Ontario. In Australia, where the worker representatives have a right to shut down unsafe operations, in the first year there were only 22 shutdowns by worker representatives and the inspectors upheld 21 of those shutdowns and supported most of the issues in the other one. As well, in Sweden, where worker representatives have had this right for years, there is no evidence of abuse or the frivolous use of such power.

The right to refuse on behalf of our members will be followed with the same procedure as an individual refusal, with a joint investigation by management and the worker member and with the inspector called in where the dispute cannot be resolved. Where workers abuse the right to refuse now or even in our committee, the right to refuse on behalf of the workers, no protection is afforded by the act, and that is sufficient deterrent to any frivolous action.

At the present time, worker members on the joint committees can recommend until they are blue in the face, and in the case of de Havilland Aircraft, can wait while the ministry issues six repeat orders to comply with a designated substance regulation, but action in this case occurred only when 500 workers walked off the job. We want to prevent the need for such drastic measures.

Our committee members must have equal ability to participate in decision making in health and safety. With proper training and support from the ministry, we believe that such a right will require employers to take a much more careful and considered look at what we need to protect our health and safety, and implement the controls to reduce or eliminate the hazards.

Mr. Turk: The right to refuse: The individual right to refuse remains a significant right to self-protection and the protection of others, and while we have concerns about it as an individual right, we believe that it must be strengthened.

All workers must have the right to refuse unsafe work. Correctional officers and hospital workers are often faced with violence from inmates or patients, and such a right affords the only protection that worker may have. Neither police, firefighters, correction officers, health care workers nor teachers are going to abandon their responsibilities on their job, but surely they are not required to place their lives at risk in carrying out their duties.

Workers must have the right to refuse any work that they believe to be unsafe for themselves or any other person. At present, workers can only refuse

if any equipment, machine, device or thing or the physical condition of the work place is believed to endanger their health or safety or the health and safety of another worker.

Patients, inmates and clients can threaten workers' health and safety; and even shift-work patterns can adversely affect workers' health and safety. In the Hinton train crash in Alberta, for example, long, often split, shifts, with no days off, were found to have produced fatigue in the engineers, which contributed to the crash, according to Mr. Justice Foisy.

Groups of workers facing hazards on the job must have the right to refuse. Workers must have the right to refuse to put members of the public at risk in addition to other workers. A school board employee or a municipal employee, for example, must be able to refuse to spray poisonous herbicides or pesticides in school yards or park lands if children or the public are present. No worker should be assigned that job until the refusal is resolved.

The full wages and benefits of any workers affected by a refusal to work, either by an individual worker or a committee member on his behalf, or by an inspector's shutdown orders, must be protected.

The Ontario Federation of Labour also believes that workers should have the right to refuse in order to protect their reproductive capacity. Pregnant women, and both men and women considering reproduction, should have the right to protective reassignment without loss of wages or benefits if there is a hazard on their job that could prevent their ability to conceive or to carry a healthy foetus to full term. If another safe assignment is unavailable, full wage and benefit protection must also be ensured.

Additional concerns in health and safety: There is a number of other areas of concern in health and safety that Bill 149 does not address, including the issue of toxic substance and hazardous physical agent regulations; the present appeal system under section 32, which still remains within the Ministry of Labour and as it has evolved, precludes most workers from being able to appeal inspectors' actions; the ministry's continual endorsement of company doctors who have abused both confidentiality and refused to tell workers of their deteriorating health status, which in turn supports our need for independent occupational health and safety clinics controlled by labour.

We have attached, for the committee's information, a presentation that the Ontario Federation of Labour made to the Minister of Labour (Mr. Wrye) in the fall of 1985, containing amendments to the Occupational Health and Safety Act that we believe would do much to ensure safer and healthier work places in Ontario. As well, we have attached a policy paper passed at the Ontario Federation of Labour's 1986 convention outlining a number of recommendations concerning the administrative structures necessary to ensure safe and healthy work places.

Ms. Perrotta: The shortness of time in these committee hearings precludes us from further detail, and we hope that the committee will ensure other affiliated unions and workers the opportunity to address their very real concerns.

When all is said and done, and even with the amendments that we propose, if we have no enforcement of this law, we have nothing. We know that the present system of internal responsibility and self-compliance has resulted in 78 per cent of our work places being in violation of the law or its

regulations. We have between 30 and 40 per cent of work places failing to comply with the requirements to control regulated toxic substances, and we had almost 79,000 orders issued by the Ministry of Labour in 1985-86 for clear violations of the act and its regulations. So reliance on self-compliance is simply not working.

1740

Certainly, average fines in the industrial sector of \$2,655, when the ministry does decide to prosecute and actually wins the case, hardly present a deterrent for flouting the law. The minister's proposed amendments to increase the fines to \$250,000 and widen the potential liability to include directors and officers of the corporation, while appearing to be a step forward, offer no deterrent if the ministry intends to rely on self-compliance in the future.

The Ontario Law Reform Commission recommended that criminal prosecution be considered in certain circumstances, yet to date the only criminal prosecution has been launched against a worker.

It is time we began to understand the political reality in health and safety that takes its ever-increasing toll in workers' lives, injuries and illnesses. We, too, hear the cries of our employers about the ever-increasing costs of our workers' compensation system in Ontario, but we say to you as legislators, the way to reduce the cost of compensation is to reduce the numbers of accidents and illnesses in the work place and not by reducing or eliminating benefits to the victims of a system that fails to protect our workers.

More than \$1 billion was paid out in 1986 in direct compensation payments in this province, which means that between \$4 billion and \$7 billion was spent in indirect costs that we as a society must bear. There are between five and seven times more days lost to production due to injuries and illnesses in the work place than to strikes and lockouts, and yet what fills the pages of our papers but labour unrest?

It is time we broke this conspiracy of silence about the true toll of occupational deaths, injuries and illnesses. When one police officer loses his or her life on the job, there is a major demonstration and thousands of fellow officers attend the funeral. It is time that workers in Ontario and across Canada get the same recognition.

As a society, we can no longer tolerate the conditions in our work places that kill, maim and disease our workers. Our economy cannot afford to lose such productive capacity through illnesses and injury, and our social systems cannot afford to handle the costs of maintaining the victims and their families.

We believe the amendments that are recommended both in Bill 149 and in our general submission will do much to provide for the highest degree of physical, mental and social wellbeing of Ontario workers, and we ask for your support. Our members' very lives depend upon it. Thank you very much.

Mr. Chairman: Your brief minces no words, which is refreshing to the committee.

Mr. Martel, before you start, we would like to have an exchange with the

members from the Ontario Federation of Labour. We would also like to deal with that motion. If members want, we could deal with that motion tomorrow as well.

Mr. Wildman: In that regard, I do not have any problem with having it held over to tomorrow. However, there is one concern I have. If we were to pass any motion that would require action by the Speaker at some later date, it would have to be reported to the House tomorrow, I would think, in case the House recesses.

Mr. Chairman: Okay. Let us have an exchange now, because we are running out of minutes.

Mr. Martel: I want to ask a very quick question because I want the rest of the members of the committee to understand who the advisory council is, so people do not think it is some conspiratorial group. It is a very high-powered group of individuals sitting on that advisory council, coming from both management and labour. It is imperative that the committee know who has made probably the toughest recommendations or the toughest condemnation of what is going on: that is, the advisory council.

Mr. O'Flynn: Labour is outnumbered on the committee. It is made up of labour, management and the public, professional people.

Mr. Martel: Who are some of the people from the corporations? I think, for example, Dr. McCalla is from the university, but which corporations are represented there?

Mr. O'Flynn: I do not have a handle on their names. I am a recent appointee to the advisory council; I have not got their names yet.

Mr. Martel: People like Don Smith might be on that committee.

Mr. O'Flynn: Linda does not have a handle on them, either.

Mr. Martel: I think Don Smith is on that committee, is he not?

Mr. O'Flynn: Does anyone know?

Mr. Martel: I believe he is.

Mr. Pierce: Nobody wants to know.

Mr. Martel: I want you to know very deliberately, because I want the committee to realize that the toughest condemnation of what is going on is from an advisory council drawn primarily from management.

Mr. Pierce: Let me say that nobody admits to wanting to know.

Mr. O'Flynn: I will tell you what; we will solve the problem for you. We will get you a list and send it down to you.

Mr. Martel: Good.

Mr. Pierce: I am sure that is available.

Mr. Martel: I appreciate that.

Mr. O'Flynn: We are outnumbered, so the recommendations of the council do not have a majority input from labour.

Mr. Gordon: I am interested in what is happening with health and safety committees in the work place. But even if a health and safety committee suspects that some chemical is dangerous to workers' health, at present, outside the new work place hazardous materials information system inventory and the right-to-know legislation by the current government, which we passed just yesterday, there are really no teeth that the workers can use in order to get those chemicals assessed. Is that not true?

Ms. Jolley: In fact, 80 per cent of the chemicals that are present in our work places today have never been tested, according to a study done in the United States. In the 20 per cent that have had some testing done, the testing has been considered inadequate or minimal, at best. Indeed, a study done there showed that not one work place chemical has been adequately assessed to indicate its true potential for toxicity.

What we do need is testing of the chemicals in our work places. The WHMIS agreement that, thank you very much, you passed through the Legislature yesterday through Bill 79 was predicated on the understanding that it would not require testing. However, since WHMIS has been agreed to, we have moved on, through the Environmental Contaminants Act at the federal level, to try to work out some format for testing in the future, again through an industry-labour-government organization. But we certainly do need proper testing.

In the Occupational Health and Safety Act in Ontario, the focus has been on new chemicals, but indeed as I say, most of the chemicals we have present in our work places need testing.

Mr. Gordon: Thank you.

Mr. Chairman: Mr. Ramsay, bells are ringing for you.

Mr. Ramsay: Bells are ringing. That is what I was indicating. I heard it before.

Mr. Chairman: Okay. I thought you had a question.

Do you want to deal with the proposal now, Mr. Wildman, since it is in your name?

Mr. Gordon: Is the party over?

Mr. Chairman: You are not dismissed yet. Mr. O'Flynn, all we are going to do is--

Interjection.

Mr. Chairman: Yes, I am afraid the bells are ringing for a vote and we must go in, but I was going to ask Mr. Wildman if he wanted to move a motion.

Mr. Wildman: I would like to move a motion.

Mr. Chairman: Go ahead.

Mr. Wildman: Just the first motion.

Ms. Hart: I am sorry, I did not hear what was said.

Mr. Chairman: He is going to move his motion.

Ms. Hart: Do you want to do it today? I thought it had been agreed that it would not be dealt with until tomorrow.

Mr. Wildman: No, there was no such agreement.

Mr. Chairman: No, there was no agreement.

Mr. Wildman moves that the committee contact Messrs. McKenzie and Laskin to request that the material and all documents provided to them by the Ministry of Labour and the brief and all documents presented to them by the Ontario Public Service Employees Union during their inquiry be submitted to the committee before the end of July 1987.

You have heard the motion from Mr. Wildman. If we do get it by then, it will be available to us when we next meet. That is the end of your motion.

Mr. Wildman: Yes.

Mr. Chairman: Are there any comments or questions? Are you ready for the question? All those in favour of Mr. Wildman's motion, please indicate. Opposed?

Motion agreed to.

Mr. Wildman: I would also like to move another motion.

Mr. Chairman: All right. This is not a surprise one, is it?

Mr. Wildman: No.

Mr. Chairman: Mr. Wildman moves that the committee request Mr. Speaker to issue a warrant for the production of any or all such materials and documents from Messrs. McKenzie and Laskin should they not be provided voluntarily to the committee by the end of July 1987.

Presumably, that would drop into place when we next meet.

Ms. Hart: We do not have all our members here and we need time for that. I ask that we put this over until tomorrow.

Mr. Chairman: It is agreed, Mr. Wildman?

Mr. Wildman: I agree that it be put over until tomorrow.

Mr. Chairman: Okay, it is agreed, we will deal with that motion tomorrow.

Mr. O'Flynn, thank you very much to you and your colleagues for appearing before the committee. I apologize for the shortness of time, but it is the intention of the committee to conduct another three weeks of hearings, so we are not attempting to cut everyone off at this point.

Mr. O'Flynn: Good. Thank you very much.

The committee adjourned at 5:51 p.m.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT
OCCUPATIONAL HEALTH AND SAFETY AMENDMENT ACT
THURSDAY, JUNE 25, 1987



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, F. (Nickel Belt NDP)

VICE-CHAIRMAN: Reville, D. (Riverdale NDP)

Bernier, L. (Kenora PC)

Caplan, E. (Oriole L)

Gordon, J. K. (Sudbury PC)

McGuigan, J. F. (Kent-Elgin L)

Offer, S. (Mississauga North L)

Pierce, F. J. (Rainy River PC)

South, L. (Frontenac-Addington L)

Stevenson, K. R. (Durham-York PC)

Wildman, B. (Algoma NDP)

Substitutions:

Charlton, B. A. (Hamilton Mountain NDP) for Mr. Wildman

Hart, C. E. (York East L) for Mr. Offer

Polsinelli, C. (Yorkview L) for Mr. South

Also taking part:

Martel, E. W. (Sudbury East NDP)

Clerk: Decker, T.

Witnesses:

From the Canadian Federation of Independent Business:

Bennett, J., Vice-President, Legislative Affairs

Andrew, J., Director, Provincial Affairs, Ontario

From the Board of Trade of Metropolitan Toronto:

Dunsmore, R. R., Vice-Chairman, Labour Relations Committee

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, June 25, 1987

The committee met at 3:58 p.m. in committee room 1.

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT ACT
(continued)

Consideration of Bill 149, An Act to amend the Occupational Health and Safety Act, 1987.

Mr. Chairman: The committee will come to order. The debate on Bill 149 continues in the form of public presentations. This is the last day of hearings, I think, before we break for a month or two, and then we will see what happens.

Today we have the Canadian Federation of Independent Business, and two people who are not new to legislative committees, Judith Andrew and Jim Bennett. I believe you do not have a written presentation but rather an oral one.

Mr. Bennett: We have an opening statement.

Mr. Chairman: Welcome to the committee. We look forward to your remarks.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

Mr. Bennett: On behalf of my colleague Judith Andrew, I would like to thank you for the invitation to appear. I regret that because of the relatively short notice we do not have a formal presentation. We do have an opening statement that we would like to make.

While we do appreciate the invitation to appear, we also very strongly regret the fact that the invitation to appear stems from Bill 149. While we do not in any way doubt the sincerity of the bill's drafter in wanting to achieve our mutual goal--that is, improved occupational health and safety for Ontario's work force--this bill is so fundamentally flawed that it negates the good intention of the member for Sudbury East (Mr. Martel).

We know full well and respect the efforts, the years of meetings, reading, discussions, debates, that Mr. Martel has put into the issue of occupational health and safety. We cannot and do not claim to match his experience, especially with the mining sector, which is so eloquently illustrated in his writings, such as Still Not Healthy, Still Not Safe.

However, we would like to comment on one area where Mr. Martel's understanding is sadly lacking and on which we can claim to have some level of expertise, that is, on the subject of small business.

Bill 149 is so grounded in the experience of big business, the Incos, the Stelcos, etc., that are in your reports, that it is totally inappropriate for small firms. Talking about employers having to provide office space, equipment and clerical assistance to enable health and safety committees to

carry out their functions is ludicrous in a segment of the business community that does not have clerical assistance or even an office of its own. Many of the small firms on which the member for Sudbury East wants to inflict this requirement do their records at home on the kitchen table. The only clerical assistance they ever get, all they can afford, comes from spouses and family members.

The vision of reality displayed in Bill 149, while it might seem totally reasonable in the context of Algoma or Chrysler, is totally impractical to an average small firm in Ontario that has 12 employees. We should remember that three quarters of the firms in Ontario have fewer than five employees.

For young businesses, usually with family members working, perhaps a couple of part-time employees, the notion of formal safety committees with their worker majority does not make any sense. For the self-employed, for example someone laid off at Goodyear trying to start his own woodworking business, does he represent management or workers or does he change chairs at the meeting of his committee of one person?

I would like to remind the members of this committee that it is the very young, very small firms that have been and will continue creating most of the new jobs in Ontario and across the country. According to Statistics Canada, firms with fewer than five employees accounted for 49 per cent, almost half, of full-year equivalent jobs created in Ontario from 1978 to 1984. These same firms in Ontario created approximately one quarter of all the net new jobs in Canada during that period. The majority of these extra jobs, which help to offset the jobs shed by larger corporations, came from new firms that just started during the period in study.

I would also like to remind the members of this committee that only half of the small firms make a profit in any given year. The rest break even or lose money. In those that do make profits, for the most part the profits are marginal and likely to be reinvested in the firm. Startups and young firms are especially vulnerable.

Finally, we would like to remind you that the overwhelming majority of small firms do not have a separate personnel office or officer. The owner-operator does it all.

The point we want to make is that the proposal in Bill 149 to impose health and safety committees on firms of fewer than 20 employees, and not those handling designated substances, will create an administrative demand that they are unable to handle. Almost a quarter, 24.3 per cent, of our youngest firms, those in business for a year or less, report that provincial government regulations, paperwork and inspections are a serious problem for their business. When you add in federal and municipal requirements, over half of all our members in Ontario report serious problems coping with administrative red tape and the paper burden.

While we do not in any way disagree on how essential it is to reduce the number and incidence of work place illnesses and accidents and to eliminate totally work-related fatalities, we categorically reject Bill 149 as an appropriate vehicle to achieve these goals.

Lest we be thought to be totally hung up on administrative details, we must emphasize that we reject the basic premise of Bill 149: that safety concerns can only be addressed in an adversarial fashion. The formal collective bargaining system, which is obviously an approach the member for

Sudbury East and his colleagues understand and feel comfortable with, is still largely an alien approach in the overwhelming majority of small firms.

For most small business people, employees are usually family members, friends, neighbours, not faceless names and numbers on time cards. Most entrepreneurs share the working conditions on the shop floor with their employees. They are not running businesses by remote control from corporate boardrooms and distant office towers, or at arm's length through layers of supervisors and foremen. Industrial relations, working conditions, are things that they live, not things that they study or delegate. They share the interests of their employees. They share the risks. Most of them want to improve the health and safety of their work places because they care for the people they work with, not just because of union demands and grievances or just because of a desire to reduce Workers' Compensation Board premiums.

In these kinds of circumstances, in the average small business, the will to improve working conditions is there. We have seen that in our members' support for employees' right to refuse work they consider unsafe. We have seen it in their support for workers' right to know regarding designated substances. The wish to improve conditions is there. What most small and medium-sized firms are lacking is the knowledge of how to improve.

Given that basic approach--a responsible, co-operative concern for safety--one does not, should not, get bogged down in the rhetoric of workers' need to control formal safety committees in an adversarial environment or in heated arguments regarding how occupational health and safety inspectors must crack down on violations. We should instead be looking at how we jointly address the fundamental problems identified in both the report on the administration of the Occupational Health and Safety Act, and in volume 2 of the eighth annual report of the advisory council on occupational health and occupational safety.

As we read those two reports, the compelling immediate needs that strike home as so important in the small business context are: training, education of managers and workers regarding provisions of the act, general education for the work force on the importance of health and safety and removing obstacles to full information on health and safety matters. Given these urgent needs, we can only reject the impulse underlying Bill 149 to legislate unrealistic, unworkable requirements on small firms. Before we scrap the current system, we should make workers and employers aware. Before we further regulate, we should educate.

We have suggestions as to how that should be done. We can answer questions or make comments on specific items in Bill 149 should that seem desirable to committee members, but we wanted to start by stating our basic premise. Formal committees can help improve work place safety, but they are not the only way to do so. Management and labour commitment to safety is the vital prerequisite, and unions and organized firms do not have a monopoly on concerns for worker safety. It is our understanding that Dofasco, which has no joint health and safety committee, has one of the best safety records in the province.

Mr. Martel: Dead wrong. You are dead wrong.

Mr. Chairman: Let Mr. Bennett finish his presentation.

Mr. Bennett: Surprisingly, that was not mentioned in Mr. Martel's report. Interestingly, the member for Sudbury East did not mention any examples of success stories, only horror stories.

We would hope that when sectoral groups, such as the Canadian Manufacturers' Association, Council of Ontario Construction Associations and the mining association appear before this committee in the fall to discuss this bill or other health and safety legislation, they can give some of the success stories. Hopefully, we can learn from our positive results, as well as from our failures.

There definitely still is a lot to learn. I think we can all agree that when it comes to work-related fatalities, one is too many. There has been some progress, but there still is a long way to go. That being said, we remain convinced that Bill 149 is the wrong way to go. Thank you.

1610

Mr. Chairman: Thank you, Mr. Bennett. Not surprisingly, there is at least one person who wants to have an exchange with you.

Mr. Martel: Let me say to my friend I listened carefully to what he had to say. It might not come as a surprise to him that it is from the small, nonunionized plants that the Ministry of Labour gets most of its calls anonymously, and I am talking about the anonymous calls because workers are fearful that they will get fired.

Maybe you could tell me why workers refuse to deal with their management in very small firms but in fact go anonymously to the Ministry of Labour. You tell me it is so wonderful. Maybe you can tell me why that happens.

Mr. Bennett: I am not surprised that, to use your term, the majority of the calls that are anonymous come from unorganized firms. The unionized firms have their formal grievance procedure so that is not a concern.

I do not have statistics--I do not know if you do--in terms of the relative number of anonymous calls versus the relative number of formal grievances.

Mr. Martel: These are not formal grievances that are launched in a dispute between a union and a company. They have a process under the law, and in that process they make a complaint. They can try to resolve it by sitting down together to sort it out, so that they do not call the Minister of Labour (Mr. Wrye). I do not believe the Minister of Labour should be in on every case. There should be a way of resolving differences. I am simply saying to you that the overwhelming majority of calls the Ministry of Labour gets are anonymous and are from unorganized plants, small plants. Why is that?

Mr. Bennett: As I said, given the process as you have described, and if you have unions, as you say--

Mr. Martel: There are no unions in unorganized plants. They go directly to the Minister of Labour anonymously. Why?

Mr. Bennett: I realize that. I have worked in both unionized and nonunionized plants. It is easy to talk about a majority. What are you talking about?

Mr. Martel: Lots of calls. The Ministry of Labour can tell you, thousands of calls, and the calls that go to it are from nonunionized shops because the other way they have a process. I am going to quote Professor Doern, Centre for Policy and Program Assessment at Carleton University, during the inquiry of the royal commission on asbestos. He says:

"The job of inspector in small unorganized establishments is made particularly difficult by the tenuous position of the employee. It is almost trite to point out that the internal responsibility system cannot operate effectively where a worker thinks or fears that he jeopardizes his job every time he lodges a complaint. Prohibition of reprisals notwithstanding, an employer can almost always find some excuse to dismiss an obstreperous employee."

That is Doern, who did the survey of all the inspectors in the field who were questioned as to the difficulty they had as inspectors with respect to nonunionized shops, I suspect largely because most of the calls they received were from nonunionized shops because workers felt they were going to get fired. The Minister of Labour to this point in time, despite section 24 of the act, has in fact only supported and handled one case where section 24 was violated. I ask you to tell me how we get that spirit of co-operation when even the ministry and the inspectors themselves know full well that nonunionized workers do not go to their employers for fear of being fired.

Mr. Bennett: Mr. Martel, there is no denying that there are some bad employers any more than there are obstreperous unions and bad employees. The fact that your study found only negatives does not mean there are no positives.

Mr. Martel: My study did not say that; in fact, my last study said that according to Inco, a big company, it said that unless top management wanted it, occupational health cannot work.

Mr. Bennett: I do not think there is any disagreement on that.

Mr. Martel: Then why are we having a worker a day killed in this province, every working day of the year, and why did we have 442,000 accidents last year?

Mr. Bennett: Mr. Martel, those figures are not acceptable, and I think all of us want to work on improving them. However, do you have any figures--because we have not found them--that show that those fatalities are in small firms or nonunionized firms? The best data we have been able to get show that the frequency rate for injuries for the very small firms, under six employees, is the lowest in the province. It is lower than firms of over 500 employees.

Mr. Martel: But your submission is that there is no way it can work. Listen to the minister's own advisory council in this report prepared for the minister after my report and after McKenzie-Laskin. This is the minister's advisory council primarily, and it says that the hopes of the Ham royal commission for the most part have gone unfulfilled--that is 10 years after the act was in place--the hopes that came up in the royal commission.

Mr. Bennett: Seven, but yes.

Mr. Martel: Seven? It was 1977 or 1978.

Mr. Bennett: October 1979.

Mr. Martel: What is the date now?

Mr. Polsinelli: It is 1987.

Mr. Martel: We are talking about a situation that has worsened and got got better.

Mr. Bennett: That is not true. It has not improved but it has not worsened. The statistics also will show--and this is not something to be totally satisfied with, but I do not think we can ignore it--the number of serious accidents, the percentage that are fractures and punctures, compared to the minor accidents, is dropping. I do not think we can forget that.

Mr. Martel: You and I have different figures. I have the Ministry of Labour's figures.

Interjections.

Mr. Martel: I can quote the minister because his study contradicts what you have said today in a dozen ways. The best safety records, the best health and safety, are where there are committees with unionized employees.

Mr. Bennett: The frequency rates--and we just received them--

Ms. Andrew: Injury frequency rate for firms with under six employees is five, and it increases slightly for firms under 24 employees, between six and 24, to 6.2.

Mr. Martel: And Harvey also says in his report that the best health and safety is found in unionized operations throughout the province where, in fact, the union people who are doing the collective bargaining are also part of the health and safety committee, which flies in the face of what Ham said would happen, it flies in the face of what Burkett recommended and so on, that in fact it is where you get the two together.

You say I am looking for a confrontational process. I am not, but I am saying the ministry itself and Harvey in his study find that the best health and safety is where you have that sort of confrontation. I am not suggesting the confrontation; I am suggesting that the present act, which gives management absolute power, is not working, and the minister's own advisory council says that. They, in fact, suggest that the whole process must be opened up.

Mr. Bennett: They did recommend that the process be opened up. They did not say it is not working. They said there is room for improvement. They did not--

Mr. Martel: Let me quote it. "The promise of an improvement in the future wellbeing of workers, implied in the royal commission, has for the most part gone unfulfilled." You tell me what that means; that it is working or not working.

Mr. Polsinelli: The promise?

Mr. Martel: The promise of an improvement, because of the Ham royal commission, has gone unfulfilled. What does that mean?

Mr. Bennett: For the most part.

Mr. Martel: That is right. For the most part, it has gone unfulfilled. What does that mean?

Mr. Bennett: That means there is still room for improvement and that improvement can and should be made. It does not say it is not working.

Ms. Andrew: Our contention is that for the smaller firms it is a matter of education and disseminating information for the smaller firms, not necessarily overregulating with very stringent rules for health and safety committees. Those are inappropriate for a small firm. They may work in a large unionized shop.

1720

Mr. Martel: Do people get hurt and do people die in small operations? Do they get hurt?

Mr. Bennett: Undoubtedly.

Ms. Andrew: Do you have any evidence on this? Whether it is more relevant in small firms--

Mr. Martel: No, I am asking you. Have you got evidence that nobody gets hurt in small operations?

Mr. Bennett: No.

Ms. Andrew: Human error prevails across the economy.

Mr. Martel: You are blaming all these problems on human error?

Mr. Bennett: No.

Ms. Andrew: Sure it is, it is human error backed by inadequate education.

Mr. Martel: Russ Ramsay used to argue with me that we have to educate. He said that when he was minister, and he became minister in 1981. When does the process begin?

Mr. Bennett: The process has begun and more remains to be done. Do you know how long it takes to reach hundreds of thousands of small firms? Even when governments are trying to give them money, it takes years to get the information out. I do not know if this particular government or previous governments have ever made the type of effort that needs to be made.

Mr. Martel: This is what the advisory council says: "Accident and fatality rates reported by the Workers' Compensation Board remain intolerably high. Ministry of Labour inspectors write thousands of orders every year to correct violations of the act and regulations. This apparent lack of measurable progress at the shop floor level is evident. Also, in the results of the council survey of joint health and safety committees, although there may be some room for debate about the conclusions to be drawn from the data, it is clear from the survey that the committee system, as established under the act, is not adequate."

How do you respond to that? Your response is, "We do not want a committee system at all."

Mr. Bennett: We did not say we did not want a committee system at all. We said we did not want compulsory, worker-dominated committees imposed on firms that cannot deal with them.

Mr. Martel: I am glad you said that because I have said in this

House, and the Ontario Federation of Labour had it in its brief, that I was prepared--and I have the Hansard, if you want it--in the minister's estimates, I said, "I am prepared to share power--equally." But you see, to this point in time, management has had all the power. You would agree with that.

Mr. Bennett: No, not necessarily.

Mr. Martel: Oh, well then, do not come and tell me about the way the act works, because you have absolute power.

Mr. Bennett: When it comes to small firms, they do not have any more power relative to unions, relative to banks, relative to government, than the workers do.

Mr. Martel: They have all the absolute power to make all the decisions, and the workers in the small plants, under 20 employees, do not even have the protection of the act because they do not have a committee. How can it work if they do not have a committee? Tell me that.

Mr. Bennett: For many of them it is working, obviously, because the frequency ratios are better than for big firms.

Mr. Martel: Ah, well, it is working. That is why the provincial auditor is highly critical of the Ministry of Labour. It is why the law reform commission is highly critical. It is why the advisory council is critical of the minister.

Mr. Polsinelli: On a point of order, Mr. Chairman: I hear bells. Maybe it is because of Mr. Martel's eloquent performance.

Ms. Caplan: Could I move that we let Mr. Martel continue while the rest of us all go to vote?

Mr. Chairman: No, you cannot do that. The bells are ringing. I do not know at this point whether it is a quorum or whether it is a vote. There is an indication that--

Mr. Polsinelli: I understand there will be a number of votes this afternoon.

Mr. Gordon: Are they not going to stack them?

Mr. Chairman: We do not know that at this point. We have to go up.

Mr. Polsinelli: There is a requirement, when the bells ring from the House, Mr. Chairman, the committee must go up--must.

Mr. Martel: Might I make one other point, Mr. Chairman?

Mr. Chairman: Let us adjourn now, and come back as soon as the bells are completed. Is it a quorum? It is a 10-minute bell for committee of the whole House.

Mr. Martel: Could I just make one comment?

Mr. Chairman: All right.

Mr. Martel: I have the statistics for Stelco and Dofasco for the

years 1983, 1984 and 1985, for both companies. The lost-time accidents for Stelco in 1985 were 455. The lost-time accidents for Dofasco were 850. The lost-time accidents in 1984 were 545 for Stelco and 660 for Dofasco. In 1983 there were 383 for Stelco and 539 from Dofasco. You are attempting to make the point that a nonunionized shop can work as efficiently. The accident rate is almost double.

Ms. Andrew: That is not right. Those are absolute numbers.

Mr. Martel: Lost-time accidents, yes.

Ms. Andrew: How does that compare to the covered work force in each of those during that period?

Mr. Martel: I do not follow.

Mr. Charlton: I cannot give you precise numbers, but the numbers of employees at Dofasco are considerably lower than at Stelco.

Mr. Chairman: I am sorry, we are going to have to adjourn now. We are scheduled to hear another presentation at 4:30 p.m. The bells are ringing now for another five minutes, then a vote will be taken and then we will come back.

Is there anything else that you have to say to the Canadian Federation of Independent Business, Mr. Martel? Mr. Gordon?

Mr. Gordon: Just one thing. I think I wrote a letter to your leader or to the president of your association, John Bulloch, some time ago. I thought I would get an answer from John, and I think you answered me. By the way, my name is Jim Gordon and I am the member for Sudbury. I am not Mr. Pierce.

I listened to what you said about small business and the things that go on in small businesses. I guess as a member of this committee, I would like to believe that is the case, and I am prepared to listen to the case that is made. At the same time, if you wrote a minister of this government a letter, you would get a letter back from the minister. I do not like getting letters back from people I did not write to. I just wanted to pass that on to you. I do not want you to feel I am being too critical of you in the future. I certainly have an open mind. If Mr. Bulloch wants to write to my riding and if he wants to write to the people in my riding, if he wants to do that, then I expect he should have the decency to answer personally any letters that I write.

Mr. Chairman: I am sorry about the truncated presentation and exchange with members of the committee, but that is really out of the control of the committee. I apologize for that.

Thank you for coming before the committee this afternoon.

We are adjourned until the vote has been completed.

The committee recessed at 4:27 p.m.

16:46

Mr. Chairman: The standing committee on resources development will come to order. The next presentation is from the Board of Trade of Metropolitan Toronto. If they would take a seat at the table, we would like to hear from them.

The legislative process is in a shambles today, and there will almost certainly be other votes between now and six o'clock. I will apologize in advance. There is nothing we can do about it. Are you prepared to go ahead, to introduce yourselves and make your presentation?

Mr. Dunsmore: Yes.

Mr. Chairman: Are we rushing you?

Mr. Dunsmore: Yes.

Mr. Chairman: Do not let us do that.

BOARD OF TRADE OF METROPOLITAN TORONTO

Mr. Dunsmore: My name is Ross Dunsmore and I am one of the vice-chairmen of the labour relations committee of the board of trade. On my left is Douglas Woodliffe, a representative with Ault Foods Ltd. Soon to be sitting right here will be Bill Wright, who is with Stelco. On my immediate right is David Albinson, who comes from Dupont.

We were given perhaps short notice to prepare a full written submission, and we did not do that. However, we certainly wanted the opportunity to come before you and make certain points known to you about what has become known as the "Martel bill," I think. We also wanted to have the opportunity to ask you a few questions to assist us in further understanding some of the implications of what is proposed.

That said, let me introduce our remarks by making some general observations. We, perhaps somewhat similarly to the Canadian Federation of Independent Business in its submission, say that the proposed amendments seem to presume that all employers are capable of specialized attention to health and safety. We are particularly concerned on behalf of that group of our membership--small businessmen and businesswomen of the board of trade--that the multitude of responsibilities and obligations that are being proposed for them will be more onerous than is necessary.

Of course, on a subject like this one does not ever suggest that safety should be ignored. However, we say that perhaps the concentration of government assistance is more likely to be effective if it centres upon more education for all of the employees, as opposed to the substantial enhancement of the authority of committees and the substantial increase in the capacity of the employees to control the work place, to the loss of employer responsibility. So our first point would essentially be that more education is necessary.

We do not really agree with that advertisement that you often see on television, that talks about the worker having the knowhow and using it. It seems to us that if there continues to be an assessment that there is an ongoing safety problem, then perhaps it is more correctly suggested that the worker does not have all the knowhow that is necessary.

The second point we make, I think is one that everyone would agree upon, which is that safety is not, and ought not, to be an adversarial subject. Everyone must be concerned, and no doubt the smaller employer as much as the larger employer does not want any injuries. No one is interested in that type of difficulty in the work place.

The problem we see with the thrust of the legislation, again, is that it may create a substantial imbalance in the relationship between the parties that necessarily will be found in a unionized setting. That partly seems to exist on the basis of presuming everyone is going to act in the same interest in safety. The bill does not seem to address the possibility that employees may choose to use their newfound authority under this legislation to do a variety of other things--to achieve a number of other objectives that have nothing to do with safety, or have very little to do with safety as a primary focus. The capacity to refuse on a reasonable belief, the obligation on the employer to continue to pay during any form of investigation, will allow the employees to utilize in certain circumstances that newfound authority to bargain other positions.

We wonder why it is there is no proposal, or at least a provision that prohibits frivolous and vexatious utilization of the legislation. It seems to us that at the very least this would be an appropriate balance. Hopefully, it would never have to be used by any party, but it would give both sides the sense that they had to focus upon the safety issues and not upon other things. In any event, we say there is a mutual interest for everyone in safety.

If the employees are to be given what we regard as substantially more power to control the work place, notwithstanding everyone agrees they have a direct interest in safety, they should be excluded from all of the responsibilities and obligations that flow under the legislation. For example, if we deal simply with the present act, there is no doubt that it is really a piece of legislation that deals with absolute liability; you either do what the legislation says or you have violated it. Even in the areas of sections 13, 15 and 16, the responsibilities for contractors, employers and supervisors, those are all areas at best of strict liability. Of course, in those circumstances really the only defence is that we have done everything reasonable in the circumstances to protect the safety of the worker.

With those types of present responsibilities, we say it is hard to expect that employers are going to be less than extremely responsible, especially when the result of failing to maintain responsibility under the legislation can end you up in jail for a year and fined to a substantial degree. We note with interest that Mr. Martel and those who assisted him did not see fit to propose there be an increase in the fines or that there be directors' liability. However--please interject any time you want.

Mr. Martel: I think what we have done with Bill 149, if I might say at this point, is wake people up. There is a serious problem and we are not grappling with it very well.

I have already said to the minister in committee that I am prepared to back off the preponderance of numbers and have equal numbers on the committee, provided that the committee has some power. I have this strange feeling that when we talk about health and safety, workers work all the time in a very responsible fashion, by and large. I understand there is the odd bad apple.

They can make profit for companies. But the second we start talking about their health and their safety, we get into such things--and I wrote some of them down, because they have never been frivolous.

If you look at the number of complaints investigated last year by the Ministry of Labour with work refusal, it is in total very, very limited. Why is it that when they are dealing with their health and safety, we talk about workers wanting control of the work place? They make money for you. They are

responsible most of the time, but all of a sudden, if it is their health and safety we are talking about, they become irresponsible. To me the two do not go together. Maybe for you that is the case in your experience, but why is it that they can work all the time and make money, but if it involves their health and safety they suddenly become irresponsible people? That is what worries me.

Mr. Dunsmore: I do not think anyone has suggested that they are. It is the prospect of utilizing the legislation for a variety of purposes.

Mr. Martel: It has not happened in Europe, it has not happened in Australia and it has not happened in other countries where they have power.

Mr. Dunsmore: Just while I am on the jurisdictional point for a moment, one needs also to observe that it certainly has not happened in New York, Michigan, Illinois or Iowa or any of the other places that we regularly compete with because, of course, they do not have any of the things that you are proposing.

That balance, of course, is very necessary to keep in mind on the way through because it will be wonderful to have healthy employees with nothing to do.

Mr. Martel: I hear the business community constantly arguing about the costs of compensation, the assessments and what not going sky high. When you are paying \$30, as some construction firms do, for every \$100 of wages, then you have a serious problem. You do not go and argue with the Workers' Compensation Board to reduce the rates. The only solution is, hopefully, to reduce the accidents.

You see, my concern is, to this time in history all of the power has rested with management under this act, as it exists today. The total power rests with management. I defy anyone to suggest to me that they do not have absolute power under this act, because the health and safety committees do not have.

Mr. Dunsmore: You say that because the health and safety committees are really recommending bodies.

Mr. Martel: That is right. It is an advisory capacity only.

Mr. Dunsmore: Except I think you will find--and there have not been a lot of prosecutions--judges are certainly interested if they are assessing the reaction of employers to certain situations, whether the matter has been dealt with by the health and safety committees and whether they have followed up on recommendations that the health and safety committees have proposed. Woe to the employer who has not followed up the things the judge certainly thought were reasonable.

Mr. Martel: The average fine last year was \$2,000 or something like that.

Mr. Dunsmore: Except that it was the Legislature that determined that was the appropriate vehicle for dealing with these.

Mr. Martel: It is \$25,000. The judges have determined that they will only assess \$2,200. The minister is proposing \$250,000. I do not think I proposed any.

Mr. Dunsmore: You did not.

Mr. Martel: Because, you see, I am not interested in fines. I am interested in getting a solution, where we work things out so that people have the right to protect themselves in a co-operative manner. But that has not happened yet.

Mr. Dunsmore: With respect, I think it happens more often than not. In the same way that we concern ourselves about some matters that might happen, the concentration that you have placed upon it in terms of preparing the bill is surely on a small number of problems, as opposed to a substantial number of employers not complying with the legislation.

1700

Mr. Martel: We have 204 or 207 inspectors in the field right now and they wrote something like 80,000 orders last year. A full 10 or 15 per cent of the companies failed to comply with the original order.

Now the minister has managed to get rid of that noncompliance by removing that sector from his annual report, so we do not know who does not comply any more, but it used to be between 10 and 15. I have never been a great proponent of charging the first time. In fact, if you check back what I have said over the years, I have always argued that it is when they do not comply.

I am not interested in a bunch of fines. I am not interested in that sort of thing. I am interested in trying to reduce costs and trying to reduce injury and I think the only way it is ever going to happen is when you have shared power, not as McKenzie and Laskin would say, to control the method of production in the work place. That has no place in health and safety. And labour has not done that to this time in history in Ontario and certainly not in Sweden, West Germany or Australia. They have not been frivolous with their health.

Mr. Dunsmore: I think the concern I was going on to deal with when I invited you to chat was the fact that the present legislation--indeed, the proposals that you make--centres the responsibility for complying with the legislation primarily on the employer. We find really nothing that requires, for example, the committee to be subject to prosecution if it fails to act, and you certainly find nothing that requires the union to be subject to prosecution if it fails to act.

Mr. Martel: Wait a minute, before you go any further, I just happen to have the prosecutions with me for the years 1985-86. There were more workers prosecuted than companies. Does that shock you? Do you believe that? The Minister of Labour, dated January 20, 1987, to a question I put in the Legislature, "Total number of companies and workers charged where convictions were obtained in 1984-85, construction sector: companies, 104; workers, 86. In 1985-86, companies, 111; workers, 218."

Does that amaze you?

Mr. Dunsmore: No, it does not.

Mr. Martel: But they are finding more. With absolute power resting with management, there are more workers convicted than corporations.

Mr. Dunsmore: With respect, what is problematic to us is we do not see how your proposals are in any way going to assist the employees in protecting themselves from themselves.

Mr. Martel: Because the employees have to have a right, a say and an ability to sit down with management. If you look at Inco, which has done an excellent job, it now has 13 joint health and safety people from the union, paid for by the company, to enforce the legislation.

They have reduced their accident rate in the last 10 years from something like 13.6 per 100--and workers are producing more now than they did 10 years ago--down to about 1.6 per 100. That is progress. One of the things they attribute it to is the direct involvement of health and safety people who can make some decisions.

Mr. Dunsmore: Which they negotiated on their own with the unions.

Mr. Martel: That is right, but the point I am making is that by having that they have been able to reduce their accidents significantly. They have been able to get their compensation assessment cut in half. Surely, that is the direction we are going to be going. I think workers are responsible people. Sure, you can get the odd cowboy but, by and large, I do not think the average worker in your operation is a cowboy.

Mr. Dunsmore: So you will not have any problem in proposing the frivolous and vexatious protection then?

Mr. Martel: If it is used appropriately, no. But I have not seen that happen yet.

Mr. Dunsmore: That is the same answer--"If it is used appropriately"--that we can give to all of the proposals in the bill. If they are used appropriately, there may not be that many problems.

Mr. Martel: Let me just tell you how many times the Ministry of Labour was called in last year on work refusals. "Refusals to work investigated in the mining sector, 32." That is not a lot for the whole mining industry. The workers use their power frivolously.

Mr. Dunsmore: With respect, one of the proposals you make that would make it much more attractive, if I can put it in this fashion, to do what we are concerned about is the fact that you are going to pay them all to be off.

Mr. Martel: Why? You make that quantum leap that, all of a sudden, responsible people become irresponsible. Why are they so irresponsible?

Mr. Polsinelli: Mr. Martel, with the greatest respect, are you not making that assessment and judgement with respect to the employers?

Mr. Martel: They have the power under the act now, Claudio, and things have not improved. If you want to go back to the McCalla report, the minister's own advisory council, it says conditions have not improved since the time of the Ham royal commission. I did not say that. That is an advisory council made up of Mr. Smith, of Ellis-Don, a small corporation. I believe people from the steel industry were on there. I could give you the names of the people who were on the minister's advisory council, and they say things have not changed. You are arguing for the status quo.

Mr. Dunsmore: We would have said to you that the legislation that is presently there really has not been in place very long.

Mr. Martel: Ten years.

Mr. Dunsmore: You are here proposing to amend it all when we think it is working pretty well.

Mr. Martel: Here is the minister's advisory council. I am going to tell you who is on it. You would know some of these people. For example, you would know Algoma Steel, P. L. Rooney. Someone from the steel industry, maybe Stelco, might know Rooney. Dow Chemical, R. T. Boldt.

Let me tell you what they say about the present act. You know of this little document. They say totally opposite to what you are saying to me. If you are saying you are not arguing for the status quo, I do not know what you are arguing for, because they say the present system is not working and the promise of the fulfilment of the Ham royal commission, to the largest extent, has not been achieved.

Mr. Dunsmore: Our proposition to you, especially with respect to the substantial power you propose to give to the employee committees, is that is not going to be a way in which to make it work satisfactorily either.

Mr. Martel: Does the present system work? You are taking the position that the present one works. What you do not want to do, quite frankly, is share that power with the workers, do you?

Mr. Dunsmore: The reason that proposition is taken is because in your proposals you do not suggest that they should take any of the responsibility for what they are going to become involved in.

Mr. Martel: The only worker charged with a criminal offence in Ontario to this time has been a miner in Sudbury. He was just charged four weeks ago.

I have a personal friend who was killed in a mine last year. A scoop tram had been buried the week before. The employer took him in and said: "That is dangerous. There is the scoop tram; it is still buried. We will pay you an 85 per cent bonus to go in there and work." He did, and we buried him. My friend the member for Nickel Belt (Mr. Laughren) and I buried him. There were no charges.

Mr. Dunsmore: But that is not to say that the legislation cannot work and there cannot be charges the way it is now.

Mr. Martel: It cannot work as long as management has absolute power and it does not have to have a fair exchange of ideas. Inco came before my task force. As I said to the earlier group, they said to me that unless upper management wants it to work, it will not work.

Mr. Dunsmore: With respect, in the example you have given, surely it is a determination that can be made under the legislation by the investigators and the office of the Attorney General as to whether or not to move in certain circumstances. That is not to say the legislation does not work. It may be that it is not being approached the way you would like, but that is not to produce the argument that there ought to be substantial changes, especially when you offer nothing in return.

Mr. Martel: Nothing in return?

Mr. Dunsmore: Nothing in return in terms of employee responsibility, similar to that of the supervisor. For example, who is going to want to be a supervisor under this legislation? We are not going to have anybody who is going to want to take those types of responsibilities in the province.

Mr. Martel: Let me ask you, who wants to be a health and safety representative from a union today under this? They cannot keep the people who are on the health and safety committees there because, in fact, they are harassed more than the president of the union in the work place.

1710

Mr. Dunsmore: With respect, under the proposals you have, everyone in the entire company would want to be a health and safety rep, because they get full pay, no responsibility and they get training and lots of power, and we say that is simply the wrong focus.

Mr. Martel: You keep coming back and telling me they are all irresponsible.

Mr. Dunsmore: I did not say that at all.

Mr. Martel: I would want the best employees. Inco, Denison Mines and Rio Algom have found it to their advantage to have good health and safety reps because it has helped to reduce their accident rate very significantly because of this.

Mr. Dunsmore: All under the present legislation?

Mr. Martel: No, because of the collective agreement.

Mr. Chairman: Mr. Martel, would you like a short break and let McGuigan ask a question?

Mr. Martel: Yes. I am looking for my McCalla report.

Mr. Dunsmore: The other thing I would like to do, since I was the one who invited Mr. Martel to speak, perhaps I could finish two or three comments.

Mr. Chairman: An excellent idea.

Mr. Dunsmore: There are several other concerns in the pieces of legislation that we did not want to leave without giving you the opportunity to hear us on, although the discussion has been so disjointed in terms of the worker reps, I think the message is fairly clear in terms of that. We simply conclude on that point by saying there is an imbalance that seems to be drawn here, and from what I heard from Mr. Martel, it is intentional, that more of the authority be given over. We say that is not appropriate, it is not justified in the present circumstances.

The imbalance continues when you get to the proposition that a worker can essentially shut down the operations or a certain part of the operation for a much less substantial reason than would now be the case, and it becomes more attractive as a matter of concern--back to frivolous and vexatious--when there is a substantial amount of money that can continue to be guaranteed to

the individual when that goes on. We say that balance is not appropriate, or that creation of an imbalance.

If the answer to the question, who is really running the place, did not continue to be management is running it and management is going to continue to be subject to all of the obligations under the legislation, then it might be a little different, but the reality is, you are not going to manage these places through the employees, because they will not take the extra responsibility, and Mr. Martel, in his bill, proposes to give them more responsibility to effect how the place is managed, with no increased obligation that flows from many of the ramifications of making decisions. That is one area.

Another area about which we are particularly concerned, is what might be called the guaranteed employment proposition. We may have this wrong, but in this bill there are two proposals that say, if someone has an incapacity to perform work because of his health, then he is to be guaranteed his wage and if he has to be moved, then he shall be retrained, and if he has to be moved to a job that pays less, he shall be retrained and shall be paid at the higher rate.

We have a great deal of difficulty with that for a variety of reasons, not the least of which would be the apparent lack of addressing the implications that has for workers' compensation and, of course, the fact that the Human Rights Code already acknowledges, in situations of disability, an obligation to accommodate, balanced by a right not to accommodate if undue hardship results. There does not appear to be any appreciation in this bill for those types of standards which have been accepted by the Legislature in terms of human rights matters. Again, we may have misconstrued that, but it seems to us to be an extremely broad power and one that is inconsistent with the way in which labour relations are normally dealt in this province; an unlimited guaranteed right to be paid at the level you were at originally.

That leads us all to the proposition of saying that this legislation really has not been in effect as long as is necessary, in our submission, for substantial change. It must also be balanced, not only against the ultimate goal of everyone being as safe as possible, but against the business reality that no other jurisdiction with which Ontario normally competes, has anything close to the proposals that are here. That is a proposition you have to keep in mind, because although no one wants to argue against safety, at the same time it cannot be simply a proposition that forces the employer to ignore every other consideration in the work place. We do not think even the employees would agree with that proposition.

Mr. Martel: What were the costs in Ontario last year, not only direct costs to the employers but to the state in terms of lost time and all the ancillary costs?

Mr. Dunsmore: I am sure they were substantial.

Mr. Martel: Billions.

Mr. Dunsmore: I am sure employers are moving as quickly as they can to avoid workers' compensation obligations and certainly prosecutions under this legislation.

Our submission to you generally would be that this is a very strong piece of legislation that is working effectively. With respect, 10 years is not sufficient to identify significant changes such as those that are

proposed. What is really needed is perhaps a stronger approach to the administration of the present legislation, coupled with substantially more education to rectify some of the problems. Those would be our submissions in general. As I say, we would be more than happy to discuss them with Mr. Martel or any other member of the committee.

Mr. McGuigan: I want to make mostly a comment. Some of these items are certainly rather far-reaching and I do not support all of them. I guess I can find some sympathy with the presenter's argument that presently it is management that has the obligations and the liabilities and that if we are going to shift the balance of power, perhaps we should put some liability on the other side of it.

I come from small business myself, not only running a small business of my own, but I have also been president of a co-operative handling food products. We broke into the business, a group of farmers without much experience or background in it. We found we had continuing quality problems which cost us a lot of money, in spite of the resolves that we would make every winter when we were deciding on how we were going to operate next year. We would always say, "We will not let this happen again," but next year it would happen again. Because the production manager had certain goals that he had to meet, the raw product was coming in the front door, and if the machines were not operating properly, you could see it piling up in cold storage and not being processed. So he would turn a blind eye to the quality problems.

We did not solve that until we put a person on staff who said, "We shut her down." If the quality was not there, the person had the power to shut it down. It did not hurt our bottom line, it helped our bottom line, because we were putting out a better-quality product. We were not having rejects, we were not having arbitrations and all that sort of thing. Mr. Dunsmore would know, in the food business, how critical quality is. People do not accept 99 per cent quality. You have to have 101 per cent quality today if you are going to succeed.

The only way we could discipline ourselves as producers was to put a person in the plant, and as soon as one of those machines was putting out cherries with the pits in them, he shut the line down. The production manager had no authority to keep that thing running. It was "Shut her down." We have been successful since then.

I have some sympathy that the only way we are really going to get some of these safety things is to shut it down. I am not convinced that maybe it does not hurt the bottom line if you correct the problems.

1720

Mr. Dunsmore: As I understand the proposals that Mr. Martel makes, any representative on the health and safety committee can choose to do that almost at will, which seems a rather strange--

Mr. Martel: No, no. Do not say that.

Mr. Chairman: Mr. Martel, let Mr. Dunsmore respond to Mr. McGuigan.

Mr. Martel: With the greatest of respect, there has to be an indication that there is a hazard. For anybody to come in here and suggest that I am saying a worker, somebody off the health and safety committee, can just shut it down almost at will--and that is what you just said--is a lot of nonsense.

Mr. Chairman: You are next on the list, Mr. Martel.

Mr. Martel: Do not come around with that baloney. Under the act, they cannot shut it down willy-nilly.

Mr. Chairman: Mr. McGuigan, did you want to pursue that?

Mr. McGuigan: Not having any experience in the industrial area, I guess we still know there are industries where you have very bad labour relations and perhaps your fear might have some foundation, but in smaller businesses I do not think you have that.

Mr. Dunsmore: The point I was going to be going on to make is that you do not want to place that type of authority in the hands of an individual who is not responsible, as your production manager was, for the operation. I have heard Mr. Polsinelli and the minister speak on several occasions about one way in which they thought they would be able to resolve situations like yours. With respect, it did not require substantially changing some of the legislation. All it required was a different approach through the ministry investigators.

To some degree, the example you gave of the production manager not being concerned enough is rectified by different approaches taken by the investigators. We simply say there is sufficient authority and responsibility available under the legislation presently. That is point one. The second one is that you are not going to get the results you want or you are addressing by giving all of this extra authority to employees on a health and safety committee. That is not the answer.

Mr. Martel: But you just said, Mr. Dunsmore--

Mr. Chairman: Be fair, Mr. Martel. Let Mr. McGuigan finish.

Mr. Martel: I have never heard such a submission.

Mr. McGuigan: I am not familiar with what you are talking about, therefore, I really cannot respond to that. But I want to say to my friend that the situation I know about is that it was only by giving power to shut the line down that we solved our problem.

Mr. Martel: I say to my friend Mr. McGuigan that nowhere under any act are employees allowed to be irresponsible. It is funny that Mr. Dunsmore says, "If it is the production manager, he is going to act responsibly, but if it is a health and safety guy on the committee, he is going to become irresponsible."

Mr. Dunsmore: No.

Mr. Martel: That is exactly what you said.

Mr. Dunsmore: With respect--

Mr. Martel: No, no. That is exactly what you said to us.

Mr. Dunsmore: The manager, of course, is subject to the obligations of the act. The employee is subject to no such obligations.

Mr. Martel: The employee is subject to the same terms of the act.

Mr. Chairman: Order, Mr. Martel.

Mr. Martel: Who are you trying to kid?

Mr. Chairman: Mr. Martel, nobody interrupted you when you were speaking earlier.

Mr. Polsinelli: On a point of order, Mr. Chairman: Through you, I would remind the members of the committee that the purpose of having witnesses here is to hear their opinion, question them on their opinion and leave debate on the act for a future point when we go through the clause-by-clause analysis. As members of this committee and this Legislature, I think we should show a little bit more respect with respect to the presenters and the people who are before us giving us their point of view, which we may not necessarily agree with, but which we have to accept.

Mr. Chairman: Thank you. I think Mr. Dunsmore is a bit of a warrior himself and he is quite capable of engaging in an exchange with Mr. Martel. Go ahead, Mr. Dunsmore.

Mr. Dunsmore: Actually, we were in the course of entertaining questions, Mr. Chairman, although there are several more matters I would be happy to touch upon briefly.

One is that Mr. Martel's bill proposes that the employer be responsible for taking on the financial obligations concerning bearing the costs of any medical monitoring programs. Also, there are a number of other proposals in his section 5 with respect to employers taking on certain expenses. I simply make this observation. There does not seem to be any proposal for the employers being able to control those expenses. They simply have to foot the bills. It seems inappropriate that if the employer is to be responsible, the employer not be able to ensure that the costs were expended in a proper fashion. That is the first point.

The second point is that if there are going to be substantial medical responsibilities flowing under the legislation, it also ought to be the case that the employer can have access to the information, even if it is information with respect to employees' personal care. Of course, if the paramount responsibility in this legislation is to create as safe a work place as possible, even the employee ought not to be able to hide from the employer relevant information about his own or her own situation.

Another point is, we wonder whether it is really necessary to impose on offices the obligation to be covered by this legislation in the manner that everyone else is obliged to. We wonder whether the costs flowing from the administration of that part of the proposal would be appropriate and whether they are necessary.

Mr. McGuigan: I can only quote information that has been given to us, but I attended a seminar in Ottawa which had to do with saving energy in office buildings. We had a chap making a presentation to us and he was talking about sick buildings. Up to that point, I had read about sick buildings, but I thought it was kind of a myth. He convinced us that there really are sick buildings. If I can boil it down, it is simply that many of the new, closed office buildings have very sophisticated systems and when the developers turn it over to the new owners, they do not simply turn over an expert to run the building. The sickness comes from not having a person who can properly run the building.

He gave a couple of examples of how a building could be sick. For instance, the air intake might be up on a flat roof, which is a tar roof. On a hot summer day, when all the vapours are coming off the roof, they are being sucked into the building. The other is that it might be down in the alley where diesel trucks idle all day long and you pick up these fumes. The final advice he gave us was, "If you have a sick building, correct it immediately." This man was a consultant. He said: "If I bring in my company to clean up the building and correct it, it will not be corrected in the employees' minds for months. Once that building is sick, the psychosomatic effects carry on for a long time." I came away convinced that there are some of these things that if they were jumped on immediately, could save a lot of money for everybody involved. I found it very interesting.

Mr. Chairman: Thank you, Mr. McGuigan. If there are no other comments--oh, Mr. Martel, did you want back on the list?

Mr. Martel: Quite frankly, I am really amazed at what I have heard. I have been this gambit before. I heard you say clearly, and I want to go back to it, that the manager, the production manager in my friend's example, was responsible and he shut it down, but the worker was irresponsible. He could do it for the health and safety--

Mr. Dunsmore: No, I never said any worker was irresponsible. That has always been your proposition.

Mr. Martel: No, no. You said the health and safety representative could shut it down for almost any reason.

Mr. Dunsmore: I said under your proposal, that is right.

Mr. Martel: No. My proposals do not give him the authority to shut it down. There has to be a danger involved.

Mr. Dunsmore: But that is what I said about your proposal.

Mr. Martel: No, that is not what you said. My proposal does not say he can shut it down.

Mr. Polsinelli: Maybe we can clarify it by reading the proposal.

Mr. Martel: Why don't you be quiet for a minute?

Mr. Polsinelli: I can just read what it says..

Mr. Martel: Why don't you be quiet for a moment, Claudio?

Mr. Polsinelli: It is very clear.

Mr. Martel: If the minister sent you here to be his front runner, then just get on the list like the rest of us.

Mr. Polsinelli: I am not on the committee.

Mr. Martel: The chairman just told me I could not intervene when you were talking.

Mr. Chaiman: Order.

Mr. Polsinelli: I simply suggest reading your proposal so we can understand it.

Mr. Martel: Where under the act do I give them the power to, willy-nilly, shut down an operation.

Mr. Dunsmore: I do not think you do that.

Mr. Martel: No, I do not. That is what you have said.

Mr. Dunsmore: No, sir, I did not.

Mr. Martel: You also said we could not afford to do any better than the United States because they do not have legislation that empowers workers to do these things and we have to remain competitive with them. Could we not maybe remain competitive if we reduced our industrial costs in terms of the tremendous levy that companies pay to the Workers' Compensation Board and maybe outmanoeuvre them in that fashion?

Mr. Dunsmore: There is no doubt that may be so, but our proposition to you would be that there has to be a balance with respect to how far you can go in advance of those with whom you compete. With all due respect, these proposals are not the way in which to achieve that balance.

1730

Mr. Martel: If you want a balance, it is a balance sheet of dollars and cents in the final analysis, if you are going to compete with them successfully. If your record is better and your costs for compensation, lost time and all that entails are much less than your competitor across the boarder, who has a hell of a high assessment because his rates and his accidents are high, you are saving money in one way while you are paying more. I guarantee you the initial outlay might be more costly in terms of a healthy work place, but what you are recommending is maintaining the status quo.

Mr. Dunsmore: With respect, in the form of a question, have you studies that show the Americans are expending substantially more money than Canadians in terms of health and safety? I doubt it.

Mr. Martel: I am saying we spend too much in terms of lost-time accidents and assessments and so on. The only way you are every going to reduce that cost is by reducing the number of accidents, the tremendous cost of pensions, and all of what that entails over the long run. While I know that the employers go to the Ministry of Labour and to the Workers' Compensation Board to argue that their assessment is too high and we should cut benefits or not allow them to go any further, it is a cost of doing business. Maybe we should do it the other way: try to reduce those costs by reducing the number of people who get injured or the number of people who get sick.

Mr. Dunsmore: I do not think anyone would have any difficulty with that argument, but of course the proposition again remains simply that you do not have to go to the substantial degree of imbalancing the relationship between the parties in the work place to achieve those ends. There are many other things that can be done with this legislation that do not necessitate the radical changes that are proposed.

Mr. Martel: The Law Reform Commission of Canada says the internal responsibility system is not working. The survey done for the minister's

advisory council, the Harvey report of 3,000 companies--and predominantly that is not a trade union organization; there are more management and academics on that committee than there are trade unionists--the survey done by the Ontario Institute for Studies in Education for the advisory council says that the present system is not working. I will quote. This is Dr. McCalla--some of you might know Dr. McCalla from McMaster University--in the report to the minister. By the way, the Provincial Auditor says the present system is not working. You say it is. This is what Dr. McCalla says on behalf of the advisory council:

"The promise of an improvement in the future wellbeing of workers implied in the royal commission has, for the most part, gone unfulfilled. Accidents and fatality rates reported by the Workers' Compensation Board remain intolerably high. Ministry of Labour inspectors write thousands of orders every year to correct violations of the act. This apparent lack of measurable progress at the shop level is evident in the results of council's survey by OISE. Although there may be some room for debate about the conclusions to be drawn from that data, it is clear from the survey that the committee system, as established under the act, is not adequate. Furthermore, there is no consensus that the internal responsibility system is functioning effectively or that alone it can realistically be expected to act as an instrument for change."

They go on. "The apparent lack of measurable progress at the shop-floor level has been a growing source of frustration to workers and their representatives. Considerable frustration has been experienced by both labour and management in trying to obtain from the Ministry of Labour information and interpretation. Concern has been expressed at the general lack of training of work place parties and of inspectors. Frustration with the ministry has now escalated."

It goes on and on. This is the minister's own advisory council.

Mr. Dunsmore: With respect, on a number of those points, particularly the one you just mentioned at the end, frustration with the ministry, we say there are a number of things that can be done, much short of the proposals that you have, to improve it substantially.

The second thing is that the statistics, of course, can be used to make any argument, with all due respect. Of course, you know that the definition of accident has been substantially changed recently in any event. So the workers' compensation statistics have some real difficulty in being compared one year to the next, because they have substantially enhanced what is an accident. With all due respect, you cannot come before this committee and say that the accidents are going up or going down and use WCB statistics, because you have to first define what the statistics are that are going to be identified.

Mr. Martel: A lost-time accident is a lost-time accident is a lost-time accident.

Mr. Dunsmore: I do not think it is that easy.

Mr. Martel: It might not be, but when you get hurt on the job and you lose time and you have compensation, somebody has been hurt. It is interesting: do you know the people who are getting hurt and killed? They are not the managers. That is why those workers are entitled to an equal amount of power. You say they do not give anything. You put the money up. They put their lives on the line. They are the people who are getting hurt: 440,000 of them

last year, and one worker killed every working day of the year for the past five years. If you think that is not putting it on the line, I do not know what you would call it.

Mr. Dunsmore: Of course, it is hard to argue with that type of motherhood proposition.

Mr. Martel: It is not a motherhood proposition. The attitude is--

Mr. Dunsmore: With respect, there is no suggestion that we do argue with that. It is not a question of everyone not being interested in safety. It is a question, with respect, of--

Mr. Martel: Who retains power.

Mr. Dunsmore: It is a question of whether or not the type of proposals that you make in your bill are necessary now in order to resolve the type of difficulties that exist, and our proposition is very simple: they are not.

Mr. Martel: Mine is very simple, my friend. You have had power under the act for the past 10 years and nothing has changed. You have had your day. It is time the workers had the right to protect themselves, and that is a very simple proposition. You might call it a motherhood statement. Since it is their lives and it is their health, they certainly have a right.

Mr. Dunsmore: It has always been their lives and it has always been their health.

Mr. Martel: It has always been their lives, but it has never been their right to have power to protect themselves, and you do not want them to share that power. That is the problem. That is why workers get killed and that is why workers continue to get injured. Until it changes and there is at least a balance of power where we will work together, because where people have worked together, my friend, whether it be Inco, whether it be Algoma Steel or whether it be even Falconbridge Nickel now, where they are starting to work together and have worker inspectors beyond the pale of this act, the accidents have gone down.

This act did not give those employees enough time. The companies they represented, with the unions they negotiated with, made it possible, and I am not prepared to wait until all companies become enlightened like the Incos and the Stelcos or the Dofascos of the world.

Interjection.

Mr. Martel: Pardon me, not Dofasco. I am telling you we cannot wait any longer because it is workers who are dying.

Mr. McGuigan: On a point of order, Mr. Chairman--

Mr. Martel: I have finished.

Mr. McGuigan: --I appreciate what our friend over there is saying, but I think it is a debate between the member and the witnesses.

Mr. Martel: You can have the floor.

Mr. Chairman: Mr. Martel said he was finished.

Are there any other questions or comments to these gentlemen? If not, Mr. Dunsmore, thank you and your colleagues for coming before the committee.

Mr. Dunsmore: Thank you, Mr. Chairman. It is always a pleasure.

Mr. Chairman: That completes today's session with Bill 149. We stand adjourned until the call of the chair.

The committee adjourned at 5:37 p.m.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

EMPLOYMENT STANDARDS AMENDMENT ACT

MONDAY, JUNE 29, 1987



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Gillies, P. A. (Brantford PC) for Mr. Bernier
Johnston, R. F. (Scarborough West NDP) for Mr. Reville
Mackenzie, R. W. (Hamilton East NDP) for Mr. Wildman
Polsinelli, C. (Yorkview L) for Mr. South

Clerk: Decker, T.

Staff:

Mifsud, L., Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, June 29, 1987

The committee met at 3:35 p.m. in committee room 1.

EMPLOYMENT STANDARDS AMENDMENT ACT

Consideration of Bill 85, An Act to amend the Employment Standards Act.

Mr. Chairman: The standing committee on resources development will come to order. As members will know, the Legislature referred Bill 85, An Act to amend the Employment Standards Act, to this committee, and that is the purpose of our gathering today.

Mr. Stevenson: I would like to place a motion on the floor for discussion.

Mr. Chairman: Mr. Stevenson moves that the resources development committee conduct public hearings on Bill 85, that the duration of the hearings not exceed one week and that the clerk be directed to notify those who have written in of these hearings and to advertise accordingly.

Mr. Stevenson: We have received letters from the Retail Merchants' Association of Canada and from the Canadian Organization of Small Business. They are both quite short letters and I will read them into the record.

First, from the Retail Merchants' Association of Canada:

"Dear Mr. Kealey:

"The Retail Merchants' Association of Canada welcomes the referral of the recent Employment Standards Act amendments, Bill 85, to the standing committee on resources development.

"The severance pay provisions of the bill have significant current and potential implications for many of the RMA's more than 4,000 independent retailer members in Ontario. We would appreciate the opportunity to make our views known in greater detail to the resources development committee on these issues so that it does not act precipitately or in a manner that would prove damaging to the job security of tens of thousands of Ontarians in the independent retail sector.

"We respectfully request that the committee permit public hearings so that there may be a reasonable degree of public consultation from groups whose interests will be affected by Bill 85."

Second, from the Canadian Organization of Small Business:

"Dear Mr. Kealey:

"The Canadian Organization of Small Business welcomes the referral of the recent Employment Standards Act amendments, Bill 85, to the standing committee on resources development.

"This legislation is a significant departure from past measures defining the entitlement to severance pay in Ontario. We believe that it deserves careful review and meaningful consultation and input from employer organizations and other interested groups. For this reason, we wish to make a formal presentation to the resources development committee on behalf of our members.

"The Employment Standards Act is a statute of great significance to Ontario's more than 400,000 small employers. We respectfully request that the Legislature not ram through these significant changes without the opportunity for meaningful public discussion."

That is from Geoffrey Hale.

1540

Mr. R. F. Johnston: That convinces me.

Mr. Gillies: I guess that it is then.

Mr. Stevenson: Just as a general comment, I think a number of items in the bill are issues that our Labour critics have been asking about over the last while. Of course, we want to support a number of areas of the bill. I think from the letters, however, it is significant enough and means enough to businesses that they should at least have the opportunity to present their views to this committee before we go into further discussions.

I understand that the New Democratic Party has a number of amendments it would like to bring forward and I do not doubt that various other groups would like to propose some as well. That is the purpose of moving this bill to this committee.

Mr. Polsinelli: I am going to be speaking against Mr. Stevenson's motion. I believe my party will not be supporting it. Should Mr. Stevenson's motion lose in this committee, then I will be placing a motion that the bill be reported back to the House this afternoon without amendment.

Speaking to Mr. Stevenson's motion, I can appreciate the necessity in most pieces of legislation to have public hearings and to obtain the input of the citizens of Ontario with respect to issues that affect them. However, when it comes to a bill of this importance, dealing with the issues Bill 85 is dealing with, I would like to point out to Mr. Stevenson that both the associations that have written to him have had extensive discussions with the minister. The issues they raised in your letters and the issues they will be raising before this committee have been taken into consideration by the minister; in fact, they have been raised with the minister.

In terms of the members of this Legislature and this committee dealing with this bill, if the bill is referred back to the Legislature, it could go to the committee of the whole House. Through that, any amendments that the opposition parties may have with respect to the bill could be considered and discussed by the Legislature as a whole.

I am sure that each member of this committee recognizes that we are approaching the final days of this session. It is perhaps frivolous to say, but if this bill is referred for public hearings or if this bill is kept in committee and not referred back to the Legislature, then it will not obtain passage this session and may die in Orders and Notices or have to be reintroduced at a later session, whenever that may be, in the fall.

That being said, I would again like to say that our party will not be supporting Mr. Stevenson's motion. Should that motion fail, in the wisdom of the committee, I will place my motion to refer it back to the Legislature.

Mr. Mackenzie: I will not be supporting the motion moved by my friend from the Conservative Party. I can tell you that the bill, as watered down as it is, would still not meet the aims of the Canadian Organization of Small Business. I think it is important that the bill get into the House so that the people it does cover--probably an increase from somewhere around five or six per cent to about 20 per cent of the people on severance--do get the coverage as quickly as possible.

Mr. Gillies: I am pleased to support my colleague's motion. I know some members of the committee will know of my support for changes in the severance pay legislation. I have raised it a number of times, not as often as my friend from Hamilton East, but a few times anyway. I think that we have all, in the instances of closures or layoffs in our own ridings, been frustrated over the years by the ability of, I hope, a very small minority of unscrupulous businesses to find easy ways around the current legislation in terms of staggering their layoffs to groups of under 50, and so on.

I was quite pleased when I saw the minister bring forward a bill. Certainly we can talk about the details of the bill and its various features at the appropriate time. Mr. Polsinelli mentioned, quite rightly, in his remarks the importance of this bill, and it is the very importance of the bill that I think necessitates the opportunity for hearings.

I do not think the hearings need be particularly lengthy, but I can tell members--and you, Mr. Chairman, will know--there have been many bills that have come before the Legislature, at least in the years I have been here, of lesser importance and lesser impact than this one, where there has been a full opportunity for committee review of those bills.

I remember when I held the office that my friend Mr. Polsinelli holds now, we debated for several weeks down here on the elimination of lie detector tests for employees. I would say that was a lesser problem and a less prevalent problem than the question of denial of severance pay, which is a very pervasive problem when we are faced with layoffs and closures.

While I want to see changes made, when we have submissions or requests from various organizations to appear before the committee, I think we should take heed. My colleague mentioned several organizations, and I have a letter here from the Ontario Chamber of Commerce sent to the Minister of Labour (Mr. Wrye) with a copy to the chairman of the committee.

I might have my opinion of one or two groups that work in this particular area, in terms of lobby groups, but I think we would all agree that the Ontario Chamber of Commerce is a very large, very influential and very representative organization of many thousands of people. I will quote from the letter from Mr. Sanderson, the president and Mr. Carnegie, the general manager of the Ontario Chamber of Commerce, saying to the minister:

"We understand that Bill 85, the Employment Standards Amendment Act, 1987, has been referred to the resources development committee. In reviewing the bill, it is clear that it may make a significant impact on some of our membership. We would appreciate an opportunity to make submissions to the committee."

It is a very direct request of this committee to have an opportunity to make a submission to review this bill.

Mr. Chairman: What is the date of the letter?

Mr. Gillies: I am sorry, Mr. Chairman. It is dated June 26, 1987. It is a letter from the Ontario Chamber of Commerce to the Minister of Labour. It says at the bottom that there was a copy sent to you, sir. I do not know if you have had it. I got a copy because there was also a copy to our leader. I can circulate that to the members if they would like it.

The point I want to make is that the goal of improving the severance pay legislation in this province is one I would imagine that every member of this committee shares and that I share. But it is an important piece of legislation, and we have specific requests from significant organizations in the province to make submissions. We ignore those requests at our peril in terms of bringing out legislation that is responsive to the wishes of the people. The people should be heard on these issues.

I urge members to support my colleague's motion. I hope that after due consideration by committee, the bill could be amended, improved perhaps by amendments that may be posed by either of the opposition parties or by the minister himself, and we would then end up with a piece of legislation which has been properly scrutinized, duly amended with an eye to its weaknesses and reported back to the House.

I know the timing is not great but, my friends, we saw bills being introduced into the House today that we would also like to see passed by the end of the day, and that is not going to happen, be it car insurance or anything else. I do not think our wish to be expeditious should override our wish to be thoughtful legislators and bring in the very best legislation we can.

Mr. Polsinelli: I appreciate the comments made by Mr. Gillies. I would like to point out, however, as I said earlier in my remarks, that there has been very extensive consultation with the private sector with respect to this bill, and the association that Mr. Gillies has also pointed out has been consulted. The Ontario Chamber of Commerce has met with the minister.

I can appreciate also that meeting with the minister and the consultations on the part of the ministry and the minister with the various interest groups may not satisfy the opposition. We feel that they have had a tremendous amount of input into preparing and actually formulating the clauses of this bill. As a government and as a ministry, we feel that this bill is responsive and that it does meet many of the needs of the Ontario population.

I would rather not get into an extensive debate on the issue. However, I would like to emphasize again that there has been extensive consultation and that most of the private sector groups that have an interest in this piece of legislation have been consulted and have been given every opportunity to make their comments with respect to it.

Mr. R. F. Johnston: I have some sympathy with the notion of having hearings on this. I cannot help but note that all the organizations referred to up to this time do not reflect anything to do with the attitudes of labour, but only to the attitudes of business on this. That means the kind of people that the Tories are advocating come before us are people who would be coming presumably to weaken this bill and the rights of workers rather than to increase their powers.

It is interesting that not one labour organization has asked for these

hearings, even though I think most labour organizations have similar concerns about the limitations on this bill that we have. Mr. Mackenzie will hopefully be moving amendments to correct some of those problems when we get to committee of the whole House. But I do think it is important to recognize the realities of life as they are today in terms of the unlikelihood of coming back as a Legislature, the difficulties that always surround reintroduction of labour legislation and getting it through. What we have here is an improvement over what we had in the past.

We have had a lot of discussion on severance pay in this House from the select committee on plant shutdowns and employee adjustment back in 1981 through to committees that have just reported in recent months. We know what the issues are, we know what our positions are, and it seems to me that if Mr. Gillies wishes to help improve this legislation, he knows how to do so in committee of the whole House. Your support for Mr. Mackenzie's amendments will be welcomed, and the workers of Ontario will thank you, although the organizations you mentioned this afternoon may not.

Mr. Chairman: Everyone understands the motion put by Mr. Stevenson. Does anyone wish it reread?

All those in favour of Mr. Stevenson's motion please indicate. All those opposed?

Motion negatived.

Mr. Chairman: Mr. Polsinelli moves that the chairman report Bill 85 to the House without amendment.

Is there any debate on Mr. Polsinelli's motion? Do you wish to speak to it, Mr. Polsinelli?

Mr. Polsinelli: Mr. Chairman, in debating Mr. Stevenson's motion, I think we have also effectively debated my motion. I would like to point out, though, in response to Mr. Johnston's comments, that many of the labour organizations have also been consulted with respect to the preparation of this bill. I refer particularly to the Steelworkers, the Auto Workers and the Ontario Federation of Labour.

Mr. Chairman: Is there any further comment on the motion by Mr. Polsinelli? If not, are you ready for the question?

All those in favour of Mr. Polsinelli's motion, please indicate. All those opposed?

Motion agreed to.

Bill ordered to be reported.

Mr. Chairman: Is there any further business before the committee? Before we adjourn, we do have to make certain assumptions, and the clerk will be notifying at the appropriate time interested organizations of our schedule for September and October, in case that should happen. I trust that is no problem with members of the committee.

The committee adjourned at 3:53 p.m.

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